

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, 7 March 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)

- Access to territory: -

- 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 ECtHR's ruling delivered in 2018 in case N.D. and N.T. v. Spain (nos. 8675/15 and 8697/15) illustrates the existing situation.

- In 2016, the Spanish Ombudsman recommended the Minister of the Interior to amend Law 12/2009 of October 30th 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. The recommendation has not been followed.

- The Ombudsman has reiterated 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

- Access to asylum procedure:

- The number of complaints received by the Spanish Ombudsman concerning the access to the asylum procedure has increased considerably during 2018. Most of these complaints refer to the arbitrariness of police decisions.

By way of example, since the end of May 2018, people in need of international protection in Madrid were required to appear before the police station of Aluche to register their asylum application. The police station only accepted 99 people per day. Due to this quota, up to 200 people, including pregnant women, children and persons with medical conditions, unsuccessfully waited outside the station and slept rough for several days in hope of getting an appointment. After obtaining access to the police station and receiving a "Certificate of intention to apply for asylum", asylum seekers were given an appointment to lodge it with the police, for dates as late as December 2020, claiming that the system has collapsed. No appropriate receipt was given to any of the asylum seekers. This fact, along with the delays during the procedure, causes them defencelessness. For this reason, the Spanish Ombudsman initiated ex officio action and made a reminder of legal duties to the General Department on Alien Affairs and Borders. However, for the time being, it has been rejected: <https://www.defensordelpueblo.es/resoluciones/recordatorio-del-deber-legal-de-acreditar-la-solicitud-de-proteccion-internacional-conforme-a-la-ley-39-2015/>

- Many of the complaints come from detention centres for migrants, providing information about the existing difficulties in accessing the asylum procedure. The Spanish Ombudsman has made suggestions and recommendations to authorities and officials in the Public Administration regarding this subject: <https://www.defensordelpueblo.es/resoluciones/que-se-impartan-instrucciones-para-establecer-en-todos-los-centros-de-internamiento-de-extranjeros-un-sistema-de-registro-de-las-solicitudes-de-asilo-que-de-cumplimiento-a-las-previsiones-de-la-ley-de/>

- Minors, accompanied and unaccompanied, have also difficulties to lodge applications for asylum (question nº11)

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

- 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

- In 2018, the Ombudsman as National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment visited a variety of centres situated in the Andalusian coast. Some of the conclusions have already been published (<https://www.defensordelpueblo.es/noticias/dia-personas-migrantes/>). Among the conclusions was the recommendation to avoid legal collective assistance to third country nationals that have just gained access to Spanish territory. Legal assistance should, instead, be individualized, adapted and effective.

4. Providing interpretation services

- Interpretation services have been the subject of repeated complaints due to the lack of interpreters of specific languages, poor interpretation or even untrustworthy interpreters. This undermines effective refugee response and constitutes a major issue for this institution.

- In addition, every possible effort must be made to enable the applicants to express their preference for an interviewer or 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.

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

In January 2019, the Superior Court of Madrid ordered the Spanish authorities to ensure that asylum seekers returning to Spain from other European countries under the Dublin Regulation are not excluded from access to the reception system. Their exclusion from the reception system, on the ground that applicants had renounced the right to reception by leaving the country, had been a tendency for the past years, which has its reflection on the complaints received by the Spanish Ombudsman. Finally, the government has adopted instructions guaranteeing returned asylum seekers' right to re-access the reception system.

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

- The use of accelerated procedures at the borders and the high rate of refusals are inappropriate. The Supreme Court in Spain has repeatedly stated the need of restricting the use of accelerated procedures as they often require officials to decide complex matters concerning events in distant cultures, which magnify the risk that an individual might be returned to persecution, torture, or other inhuman treatment. In addition, in these procedures the Inter-Ministerial Asylum and Refugee Commission meeting is not held, so decisions over applications are not discussed between different parties.
- The opinions issued by the UNHCR are not recognised as binding by the law in force in any of the procedures, although the relevance is recognized. The Ombudsman is of the opinion that the decision of not heeding the recommendation made by the UNHCR must be reasoned sufficiently, which is not always the case.
- At the airports, asylum seekers must wait for days in specific airport lounges, which have been the subject of repeated complaints due to the living conditions and the poor variety and quality of the feeding provided, among other factors.

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)

- A considerable number of complaints have been received concerning the difficulties in accessing the Reception System, as well as the conditions of the centers. In 2018, many vulnerable individuals and families have been found sleeping on the streets or in substandard housing, while they were waiting to formalize their application. In some cases, the Secretary for Migration has provided them with housing after the Spanish Ombudsman's intervention.
- The protection does not last during all the procedure, mainly taking into account that procedures suffer from remarkable delays. Housing, food, clothing and financial support is granted only during a limited number of months. Exceptionally, this kind of help can be extended, but it is not the general rule. This has led to a recommendation of the Spanish Ombudsman to the Office of the Secretary for Migration to adopt the necessary measures 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.

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)

Some improvements have been made concerning the detention of asylum seekers. Until May 2018, several complaints showed that asylum seekers were detained due to the lack of receipt proving their asylum appointment. However, the situation has improved in those regions where the asylum seekers are given a receipt when they ask for asylum.

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)

- The long processing times for asylum claims remain a key concern for the Spanish Ombudsman.
- 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. In the rest of the territory, a great amount of Police Headquarters have been enabled to hold interviews since May 2018, in order to speed up the processing of the applications. In consequence, interviews are mostly carried out by police officers without sufficient and specialized training in asylum.
- Personal interviews are not usually held in private offices with the adequate characteristics, according to privacy and confidentiality standards.
- Second interviews are held in a very small percentage of cases. However, it must be made mandatory when the first interview has not been conducted by the case examiner, who, in the judgment of this Institution, should assume this task.

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

- It should be pointed out that free legal assistance is granted at Second Instance. Nevertheless, only a small number of cases are dealt with before the Courts, in comparison with the number of denied applications.

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

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. Therefore it is important that the case examiners have an acceptable level of English comprehension, which is not always the case.

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 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.
- 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.
- MINORS: The Spanish ombudsman has recommended that the Asylum Regulation should expressly determine the right of the minors to lodge independent applications for asylum, as well as a specific procedure taking into account the degree of maturity of the minor in question. A review of the annual Ombudsman Institution reports reveals that a solution is still as yet far from having been provided to this issue.

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 Spanish Ombudsman has recommended the Office of the Secretary for Immigration and Emigration 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.

It should be noted that, delays in the procedure cause documentation problems to the asylum seekers, not being able to prove their condition as beneficiaries of protection when documents are processed with delay (first issue and renewal).

13. Return of former applicants for international protection

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)

Relatively few asylum seekers access Spain through the state programs of resettlement and relocation. Commitments in terms of relocation and resettlement must be met.

In 2016 the Spanish Ombudsman recommended the Undersecretary of Interior 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 program.

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

On 9 July 2018, the Administrative Chamber of the Spanish Supreme Court condemned the Spanish State for partially failing to meet its obligation under the Council Relocation Decisions 2015/1523 and 2015/1601. The Supreme Court observed that Spain had only fulfilled nearly 13% of its relocation obligations. The Court rejected the State's arguments that Spain was making efforts to comply with its obligation but the delays were caused by the complexity of the relocation process.

* 16. Other relevant developments

1 character(s) minimum

- The regulations implementing the Spanish Asylum Law (Ley 12/2009) should be approved as soon as possible, in order to give full effect to the provisions of the Law.
- The Spanish Ombudsman has repeatedly highlighted the unsustainable situation in which the Office of Asylum and Refuge (OAR) has been operating. Although additional personnel is being incorporated into the Asylum and Refugee Office Staff in order to reduce the severe delays in the asylum-seeking process, this measure is insufficient bearing in mind the amount of asylum applications that are ongoing.
- The Spanish Ombudsman has recommended the renewal of the data processing system of the Asylum and Refugee Office in order to improve the management and publication of the statistics on international protection. It would be necessary 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.
- The Spanish Ombudsman has stressed the need 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.
- The Office of Asylum and Refuge (OAR) should have a higher position on the organizational structure of the Ministry of Interior. In addition, one essential element is more coordination between the Ministry of Interior and the Ministry of Labour, Migrations & Social Security.

References and Sources

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

- https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2016/12/Asylum_in-_Spain.pdf
- https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2017/07/NPM_2016_EN.pdf
- <https://www.defensordelpueblo.es/en/publications/summaries-of-annual-reports/>
- <https://www.defensordelpueblo.es/resoluciones/>
- <https://www.defensordelpueblo.es/informe-anual/informe-anual-2017/>

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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](#)

Contact details

* Name of the contributing stakeholder

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

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