



ACCESS

The Role of Courts in Shaping Access to Asylum

SPAIN NATIONAL REPORT

2026

Data collection: 2024 – 2025

DOI 10.6092/unibo/amsacta/9142

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POLITICAL AND SOCIAL
SCIENCES

ACCESS is funded by the
European Research
Council 2022 Starting
Grant Gatekeepers to
International Refugee
Law—The Role of Courts
in Shaping Access to
Asylum [101078683].



European Research Council
Established by the European Commission

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INTRODUCTION: OBJECTIVES OF ACCESS

The research project “Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum” [ACCESS](#) investigates the role of courts in shaping access to asylum. It seeks to understand how courts globally interpret State-developed barriers in light of the Refugee Convention (RC) and other international norms, what socio-legal factors influence asylum access adjudication, and how the emerging jurisprudence shapes international refugee law (IRL) and migration governance.

ACCESS adopts a comparative approach as it relies on data collected from 19 countries, theoretically selected to cover all geographical regions, various legal systems and adjudication models, and different forms of participation in the international refugee law regime.¹

Given the comparative and socio-legal approach of the project, our goal is to collect data through multiple methods that guarantee comparability, comprehensiveness, and reliability of the data.

The data collection template, along with the explanatory guidance used for the preparation of this National Report, can be found at: Lacchei, Alice; Lambertini, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara (2026) National Report ACCESS Project Template. DOI: 10.6092/unibo/amsacta/8984

In addition, the summaries of the judicial decisions analysed in Part II of this National Report and cited throughout this document can be found at: Lacchei, Alice; Lambertini Martinez, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara; Jesudoss, Loretta Mary (2026) ACCESS Mid-Term Dataset: The Role of Courts in Shaping Access to Asylum. University of Bologna. DOI 10.6092/unibo/amsacta/8962. [Dataset]

DEFINING TERMS

‘Asylum’ denotes the protection a state grants on its territory to non-citizens who seek it. It includes a legal status that protects against *refoulement* and provides a right to stay. In several jurisdictions, e.g. those that do not have domestic asylum legislation, this status might not be labelled ‘asylum’. The research nevertheless includes such equivalent protection under the term ‘asylum’. Similarly, if a national system that includes an asylum status provides additional protection statuses that include a set of rights closely similar to those the 1951 Convention provides for refugees lawfully staying, the research includes those statuses under ‘asylum’.

‘Accessing asylum’ describes using legal and practical avenues to move towards the territory of potential host states, or to enter procedures and other arrangements for obtaining such status (labelled as asylum or not) implemented by a state or on its behalf. Territorial asylum processing (sometimes referred to as refugee status determination or RSD) itself or equivalent practices, however, are not studied here.

‘Barriers to accessing asylum’ refers to measures, arrangements, approaches, implementation practices, or structures that impede access to asylum. They can be implemented by state actors and others (if tolerated by the state); be of a practical or legal character; incorporate socioeconomic and cultural elements; and pertain to administrative or judicial spheres. Barriers implemented after the formal start of territorial asylum processing can be considered, if the processing is conducted as a sham or pretence rather than allowing effective access to asylum.

‘Pushbacks’ denote the removal or non-admittance of individuals trying to access asylum, without a substantive assessment of risks or potential rights violations. They can occur both on land and sea, including on international waters.

¹ Australia; Kenya, South Africa, Tunisia (Africa); Austria, Greece, Italy, Poland, Spain (Europe); India, Malaysia, Pakistan, Türkiye (Asia); Argentina, Brazil, Chile, Ecuador, Mexico (Latin America), USA.

‘Pullbacks’ are the dragging back of individuals approaching a destination state to the territory of a state from which they had departed without a substantive assessment of risks or potential rights violations. Such practices are often implemented in cooperation between two or more countries. While typically practiced at sea, such as in the territorial waters of the state of departure, pullbacks can also occur on land.

‘Walls and fences’ include physical barriers that prevent access to territory at or near borders, irrespective of the specificities of the construction or the materials used.

‘Detention’ is the imprisonment or other limitations of the right to liberty and security of person of individuals, territorially or extraterritorially, in connection with their asylum accessing.

‘Externalization of asylum processing’ denotes outsourcing procedures and transferring individuals to other jurisdictions to assess protection claims. Under such a practice, for example, potential destination states disallow asylum procedures on their territory, dismiss the corresponding applications, and deport individuals to cooperating countries. Externalized asylum processes can be based on formal and informal agreements between states.

‘Procedural barriers’ refers to any administrative practice or arrangement which, after individuals (attempt to) claim asylum, impedes the formalization of the application or the commencing of a procedure for obtaining asylum. This barrier can, for example, take the form of sham processes or (fast-track) processes based on the safe third country or safe country of origin concept, or a lack of mechanisms for ensuring appointments at registration offices.

‘Judicial or quasi-judicial body’ is the body that reviews/assesses the legality of the decisions, actions, or omissions of state authorities. This term encompasses the wide range of institutions adjudicating asylum barriers, including government/executive bodies, UNHCR, etc.

‘First instance judicial or quasi-judicial body’ is a court, tribunal, or other quasi-judicial body that hears appeals against administrative or executive decisions. **‘Second instance judicial or quasi-judicial body’** is a court or tribunal or other body that hears appeals against decisions made by a first instance judicial or quasi-judicial body. **‘Third instance judicial or quasi-judicial body’** is a court or tribunal (possibly a constitutional court) or another body that hears onward appeals, i.e., appeals against decisions already made by a judicial or quasi-judicial body of at least a second instance. In some jurisdictions there might be further levels of appeal.

‘Legal system’ refers to deeply rooted, historically conditioned attitudes about law’s nature and role, the legal system’s organization and functioning, and how the law is developed, applied, and interpreted (Merryman, 1985). The most common legal systems are the common law, civil law, Islamic, indigenous and socialist legal traditions (idem).

‘Asylum access adjudication’ refers to judicial examination and review by courts or quasi-judicial bodies of administrative decisions made by executive or immigration authorities regarding asylum.

‘Socio-legal factors’ refer to macro, meso, and micro factors influencing asylum access adjudication in the selected jurisdictions. They can originate at the macro level (state), at the meso level (judicial or quasi-judicial body), and at the micro level (individual). For example, adjudication may be influenced by the level of independence of the judiciary (macro factor) or the specialization of the asylum adjudication system (e.g., specialized courts); or availability of judicial or quasi-judicial bodies resources such as time, funds, human resources (meso factors); or individual characteristics of the actors involved, such as background or gender of adjudicators (micro factors).

‘Judicialization of politics’ refers to the increasing reliance on courts and judicial means for addressing core moral, political, and public policy questions (Hirschl 2013). For an overview of the meanings of judicialization, please refer to Hamlin and Sala (2018), who trace various forms in which judicialization of politics can occur (e.g., expanding the jurisdiction of courts, judicial activism, or due to the large number of cases decided by courts).

'Forced migration' refers to 'a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion' (IOM, 2019:77). Although it is not an international legal concept and the use of the term is debated because of the controversial dichotomy of voluntary/forced movements, in this report we refer to forced migration including the movement of refugees and asylum seekers, as well as other displaced persons (including those displaced by disasters or victims of human trafficking) who will not attempt to lodge an asylum application. When referring to 'other displaced persons', we mean those forced migrants who are not registered as asylum seekers or refugees, etc., despite being present in the country.

1. **Functioning:** What is the barrier's specific functioning? How does it prevent individuals from accessing asylum?
2. **Time:** What is the implementation period of the barrier? Is it still in use? Is there a time frame for its planned termination?
3. **Place:** Where is the barrier implemented?
4. **Actors:** Who are the key institutional and other actors implementing the barrier? Are there relevant actors from other jurisdictions or international actors?
5. **Interaction:** How does the barrier interact with other barriers and the country's asylum system?
6. **Development:** What has been the historical and political context for introducing the barrier, and how have its implementation and its character developed over time? (Please consider e.g. corruption, economic or human resources available to implement the barrier, resistance or support by local actors - officials or local community)
7. **Rationale:** What are the stated purposes (e.g., in legislative preambles, government/executive, or judicial statements) the barrier is designed to serve?
8. **Legal Status:** What legal status does the national legal framework provide to individuals prevented by this barrier from accessing asylum? For example, do they fall under a specific (protected or unprotected) category within national law, such as asylum seekers or refugees before formal recognition, or are they treated under the general framework for non-citizens?
9. **Specific Impact:** What is the impact of the barrier on specific groups, such as children, women, LGBTQ+ individuals, or people with disabilities? How does it differ from the barrier's general impact?
10. **Reach:** How many individuals have been affected by this barrier since 2010, both in absolute numbers and relative to the number of procedures for determining protection status in the same period? Has the barrier contributed to less movement of displaced persons towards the country? Please provide an informed estimate if reliable statistics or studies are unavailable.
11. **Source:** What is the legal basis or source of the barrier? Is it grounded in or approved by domestic, international, or supranational law (even if its legality might be contested)?
12. **Justification:** What justifications have the government/executive branch provided for the barrier? Are there official statements or documents that outline these justifications?
13. **Domestic and International Reactions:** What have been the reactions or interventions from domestic actors, international bodies, or other countries?
14. **Externalization:** How does the barrier outsource migration control functions to actors outside the jurisdiction?
15. **Technology:** How does the barrier draw on technological infrastructure or tools to fulfil its functioning?
16. **Other:** Any further information considered crucial for understanding this barrier to accessing asylum and its relevance.

PART 1: BARRIERS TO ACCESSING ASYLUM

I. IDENTIFYING BARRIERS

This section identifies the barriers to accessing asylum relevant to Spain between 2010 and 2024.

A. Barriers of general relevance

Pushbacks: ☒

Pullbacks: ☒

Walls and fences: ☒

Detention: ☒

Procedural barriers: ☒

B. Barriers of specific relevance to this jurisdiction

Asylum requests at Spanish diplomatic missions: rejection of transfer of asylum seekers from Spanish diplomatic missions into Spanish territory in order to submit an application.

Airport Transit Visas: requirement of airport transit visas to nationals from countries with high numbers of asylum seekers.

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pushbacks

Summary: Pushbacks, or ‘hot’ returns, consist of the immediate rejection of individuals attempting to enter Spanish territory irregularly through non-authorised border points, without proceeding to prior identification, adopting an administrative decision, or allowing access to legal safeguards. As the practice is carried out outside authorised border-crossing points and implemented immediately upon interception, it systematically prevents individuals from lodging applications for international protection. Pushbacks mainly occur at the land borders of Ceuta and Melilla and are executed at the multi-fence system located within Spanish territory. The practice involves the direct handover of individuals to Moroccan authorities, who also actively impede access to the border. This practice has been legalised through a special regime for Ceuta and Melilla introduced in 2015 at the Spanish law on aliens.

1. *Functioning*: The practice of pushbacks or hot expulsions/hot returns² consists of the rejection of individuals at the border when trying to enter irregularly into Spanish territory through non-authorised points (at land or maritime borders). The rejection of individuals at the border is executed by State agents without undertaking a previous identification of the individual and without processing an administrative decision and its corresponding legal safeguards, including the possibility of requesting international protection. Pushbacks usually take place at the land border of Ceuta and Melilla, but State agents also reject, from the beach, individuals when they attempt to enter the territory by swimming, forcing them back to Moroccan shores.

2. *Time*: Pushbacks have been implemented by Spanish authorities since at least 2005³. In 2015, the Spanish Organic Law 4/2015 on the Protection of Citizen Security approved a provision to formally regulate this

² It is of common use in Spain to refer to these practices as “devoluciones en caliente”.

³ The annual report from the Spanish Ombudsman of 2005 had already critically assessed the summary returns at the borders of Ceuta and Melilla; it also denounced violent practices by state security agents and the use of antiriot material against migrants trying to irregularly cross the border: Spanish Ombudsman (*Defensor del Pueblo*), *Informe anual 2005 y debates en las Cortes Generales*, pp. 287 et seq., available at <https://www.defensordelpueblo.es/wp-content/uploads/2015/05/INFORME2005informe.pdf>

practice. In particular, its first Final Provision amended the Spanish Organic Law 4/2000 on Aliens by adding an Additional Tenth Provision which provides for an special regime on Ceuta and Melilla (see “Source” below for its precise content). The provision continues to be in force and the practice is still in use.

3. *Place:* This barrier is implemented at the border zone of the Spanish enclaves in Morocco, the autonomous cities of Ceuta and Melilla.

4. *Actors:* The main actors are Spanish State security forces, that is, mainly the *Guardia Civil* (in charge of border surveillance) and the National Police (in charge of entry/exit controls of the territory). Moroccan agents also take part indirectly in this practice, as the Spanish authorities hand the returned individuals to them at the border.

5. *Interaction:* According to the special regime on Ceuta and Melilla regulated at the Spanish Law on Aliens, international protection requests must be lodged at the designated places in authorised border-crossing points. Although it has been clarified in Spanish case-law that the mere intention to request international protection expressed to public authorities such as police officers, border agents, migration authorities or staff from internment centres produces legal effects⁴, in practice asylum requests must be expressed at the authorised border crossing points only. As pushbacks take place at the fence system but outside those border crossing points and are implemented immediately when individuals try to cross the fence, third-country nationals are not allowed to ask for international protection.

The Spanish Constitutional Court declared these rejections to be in conformity with the Spanish Constitution provided they are applied to individualized entries, they are subject to full judicial control, and that international obligations are respected. In practice, hot expulsions continue to be carried out by Spanish authorities without respecting these safeguards⁵.

The practice of pushback interacts with the barrier of the Spanish fence system, as explained below⁶. The fence system and its surveillance, in combination with pushback practices, complicate the submission of asylum applications before the Spanish authorities.

6. *Development:* Pushbacks or immediate returns take place at the multi-fence barrier (two outer six meter high fence and a three meter high fence in between; with gates at regular intervals and surveilled through a CCTV system, including infrared cameras and movement sensors) built at the land border separating Ceuta and Melilla, respectively, from Morocco. The fence is located within Spanish territory and is, on both sides, under the full jurisdiction of Spain⁷. When individuals are trying to cross the border through non-authorised points, they are apprehended by Spanish agents -either at the intermediate zone⁸, after having crossed the internal fence or when forced to descend from the fence itself - and immediately rejected and handed over to Moroccan State agents through the intermediate gates at the fence.

In 2014, an asylum office was opened in the Melilla border crossing-point of Beni Enzar. In March 2015, another asylum office was opened in Ceuta, at the Tarajal⁹. However, there are reported cases of individuals, especially from sub-Saharan Africa, who are prevented by Moroccan authorities from

⁴ Judgment of the Spanish Supreme Court, of 6 November 2024, no. 5568/2024, ECLI:ES:TS:2024:5568.

⁵ See Commissioner for Human Rights, Council of Europe, Dunja Mijatović, “Report following her visit to Spain from 21 to 25 November 2022”, 13 April 2023, CommHR(2023)9, available at <https://rm.coe.int/report-on-spain-following-the-visit-from-21-to-25-november-2022-by-dun/1680aaeb17>, paras. 116 et seq.

⁶ See “Development” below and also the section on “Walls and Fences”.

⁷ Report of the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 9 April 2015, available [here](#).

⁸ see “Walls and Fences” *infra*.

⁹ See Defensor del Pueblo, *Estudio sobre el asilo en España. La protección internacional y los recursos del sistema de acogida*, June 2016, section 4.2, available at https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_España_2016.pdf

approaching regular border crossing points in Ceuta and Melilla, in order to seek asylum¹⁰. It is claimed that racial profiling is applied, since Sub-Saharan Africans are being prevented from approaching the border in order to apply for asylum¹¹. At the asylum office set in the Melilla border-crossing point of Beni Enzar, 9.635 asylum requests were received since its creation in March 2014, only 123 of them correspond to Sub-Saharan Africans.

Exercise of violence from State agents against individuals who climbed up the fence has been reported. Since third-country nationals endure physical injuries while jumping over the fences, the Spanish authorities have entered into a cooperation protocol with the Spanish Red Cross, which provides immediate medical assistance to intercepted foreigners¹².

There are also reports of similar incidents at the sea border between Spain and Morocco, in which *Guardia Civil* agents impede, from the beach, individuals who attempt to swim from Morocco to Melilla and force them back to Moroccan shores (for instance, by firing rubber bullets and other anti-riot materials¹³), or return them to Moroccan authorities without following any kind of procedure or applying any legal safeguard¹⁴.

At present, pushback practices by Spanish authorities continue to be reported¹⁵.

7. *Rationale*: Organic Law 2/2015 does not justify the motives for including the specific provision on rejections at the border at Ceuta and Melilla. However, at the unconstitutionality action against this law, the Government contended, before the Constitutional Court, that its purpose is to prevent illegal entry into Spanish territory from materializing while this attempt, though not yet completed, is taking place¹⁶. This would constitute a coercive action, in the exercise of a legitimate power, intended to ensure that the law is not violated. Also, regarding the absence of a specific procedure, the State Attorney points out that there are material actions by the Administration which materialize without formalization, without thereby ceasing to be legally legitimate.

8. *Legal Status*: Individuals prevented by this barrier from accessing asylum do not enjoy any legal status in Spain as they are rejected at the border and returned to Moroccan territory. Before rejection at the border, Spanish authorities consider that these individuals have not accessed Spanish territory even if they had crossed the first fence separating Morocco from Spain and entered the space in-between the two fences (area qualified as no-man's land). Further elaboration on this point is provided when addressing the operative concept of border managed by the Spanish Government in “Walls and Fences” *infra*.

¹⁰ Report, of 3 September 2018, of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018 (SG/Inf(2018)25). See also Commissioner for Human Rights, Council of Europe, Dunja Mijatović, “Report following her visit to Spain from 21 to 25 November 2022”, cit. supra.

¹¹ Asylum Information Database (AIDA)/ECRE, Country Report Spain, 2024 – Update 2025, available at <https://asylumineurope.org/reports/country/spain/>, p. 26.

¹² Report, of 3 September 2018, of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Spain, 18-24 March 2018 (SG/Inf(2018)25)).

¹³ See the Tarajal tragedy, occurred in Ceuta, in February 2014, when around 250 persons tried to approach the Spanish coast, at the Tarajal beach, by swimming, and were rejected by Guardia Civil agents to the Moroccan side. 15 people were reported dead and 23 were summarily rejected to Morocco. RTVE, “Diez años de la tragedia de El Tarajal: 15 migrantes muertos y un caso archivado sin responsabilidad penal”, 6 February 2024, available at <https://www.rtve.es/noticias/20240206/tarajal-tarajal-diez-anos-tragedia-ceuta/15952790.shtml>

¹⁴ In March 2025, the High Court of Justice of Andalusia upheld the illegality of the pushbacks at sea carried out by the Civil Guard. After intercepting the litigants on the border or on the beach as they attempted to reach the coast of Ceuta, they were then returned directly to Morocco without having access to legal assistance or interpretation. The appeal lodged by the Spanish administration was not accepted, as this return without formalities was qualified as a *de facto* action, which was not covered by the Additional Tenth Provision of the Spanish Aliens Act, foreseen for “saltos de la valla” (fence jumps at land borders): judgment of Superior Court of Justice of Andalucía, of 24 March 2025, appeal no. 823/2024, ECLI:ES:TSJAND:2025:6216.

¹⁵ AIDA/ECRE Country Report Spain, 2024-Update 2025, pp. 32-33.

¹⁶ Spanish Constitutional Court, judgement of 19 November 2020, case no. 2896/2015, ECLI:ES:TC:2020:172 (see the analysis of this case below).

9. *Specific Impact:* This barrier appears to have specific impact on unaccompanied minors¹⁷, and people with disabilities or needing special medical treatment, as no special treatment is provided to these categories of vulnerable people when executing pushback practices.

10. *Reach:* As indicated by the Venice Commission's Opinion of 2021, "[t]here is no official data on summary expulsions, since for the Spanish authorities these "rejections" happen outside of the Spanish territory and do not give rise to any administrative procedures"¹⁸.

11. *Source:* The Additional Tenth Provision of the Spanish Organic Law 4/2000, on Rights and Freedoms of Aliens in Spain (hereinafter, Spanish Aliens Act)¹⁹ formalized this practice through its amendment by the Final First Provision of Organic Law 4/2015 on the Protection of Citizen Security. The latter entered into force on 1 July 2015, but the final first provision, in particular, entered into force on the day following the publication of Organic Law 4/2015, that is, 1 April 2015.

As regards its content, the new provision provides, under a special regime for Ceuta and Melilla, that foreigners detected at the border line of the territorial demarcation of these Spanish enclaves in Moroccan territory, while attempting to overcome border containment elements to cross the border irregularly, may be rejected in order to prevent their illegal entry into Spain. Rejections will be carried out in compliance with international law on human rights and international protection binding Spain, and applications for international protection will be formalized at the designated locations at border crossings and processed in accordance with the legislation on international protection.

On 11th October 2024, a proposal to modify the Spanish Organic Law on Citizen Security was filed at the Spanish Congress by several political groups, including the socialist party in government. A specific provision on the special regime on Ceuta and Melilla was suggested, according to which "(w)ithin a maximum period of 6 months from the entry into force of this law, the tenth additional provision of Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration, will be modified with care, study, and rigor. The new provision must recognize and guarantee the rights of migrants and ensure that asylum applications are processed in accordance with the normative provisions on human rights and international protection to which Spain is a party, with strict respect for international humanitarian law. Consequently, the certification and identification of potential asylum seekers and the assessment of their access to international protection applications must be carried out in the designated locations at border crossings prior to the eventual expulsion process"²⁰. The proposed modification of the current provision on the special regime for Ceuta and Melilla has not been undertaken yet.

12. *Justification:* The Spanish Government justifies this practice and its legal provision in the duty to protect and safeguard its borders, more specifically to prevent unauthorised border crossings; and protect the possibility to enter lawfully in Spain and to ask for international protection

The Spanish Government used to indicate that these events or incidents take place outside Spanish territory and jurisdiction, as the individuals have not gone beyond the fence or protective structures at the border crossing. The Government considers that the three fences at the border constitute an operational

¹⁷ See the Opinion from the Committee on the Rights of the Child, 1 February 2019, *D. D. v. España*, CRC/C/80/D/4/2016, in which Spain was found to violate articles 3, 20 and 37 of the UN Convention regarding the pushback at the border in Melilla of an unaccompanied minor from Mali.

¹⁸ Venice Commission, "Spain - Opinion on the Citizens' Security Law, adopted by the Venice Commission at its 126th plenary session (online, 19-20 march 2021)", CDL-AD(2021)004, 22 March 2021, [https://www.coe.int/web/venice-commission/-/CDL-AD\(2021\)004-e](https://www.coe.int/web/venice-commission/-/CDL-AD(2021)004-e), para. 82.

¹⁹ Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, BOE no. 10, 12 January 2000.

²⁰ Proposición de Ley Orgánica de protección de las libertades y seguridad ciudadana, Boletín Oficial de las Cortes Generales 148-1, serie B, available at https://www.congreso.es/public_oficiales/L15/CONG/BOCG/B/BOCG-15-B-148-1.PDF (translation is ours).

border, aimed at preventing unauthorised entry by foreigners, and that Spanish jurisdiction starts where migrants had crossed all three fences comprising the system of border controls²¹.

As the Government claims that persons affected by the 10th Additional Provision of the Law on Aliens have not entered into Spain, nor *de iure* or *de facto*, the constitutional guarantees and fundamental rights to which foreigners staying in Spain are entitled would not apply. As far as international protection is concerned, nothing prevents, according to the Government, a person who finds herself in a situation that makes her eligible for asylum or subsidiary protection from submitting her corresponding application, not only in Morocco, but also in the specific offices for assistance to asylum applicants set up at the border posts of Ceuta and Melilla²².

13. Domestic and International Reactions: Several committees in charge of the application and monitoring of international treaties on the protection of human rights have been paying special attention to the hot expulsions or pushback practice of Spain at the border in Ceuta and Melilla. Since 2015, reports from the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Venice Commission, the Commissioner for Human Rights of the Council of Europe, among others, have requested Spain to fulfill its international obligations and modify this practice in order to comply with international law²³.

At EU level, the Fundamental Rights Agency (FRA) also highlights how Spanish legislation and practice restricts access to asylum for people who irregularly enter the country, circumventing border controls²⁴.

In 2017, eight Spanish organisations filed a complaint with the European Anti-Fraud Office against Spain concerning the use of EU funds – namely those provided under the Internal Security Fund and the ISF-Borders and Visas, in connection with alleged human rights violation resulting from violent and disproportionate border practices, particularly following the Melilla tragedy of June 2022, in which around 37 people are reported to have died²⁵.

The European Court of Human Rights has addressed the Spanish pushback practice, most notably in *ND and NT v. Spain* (GC, 2020)²⁶, where it concluded that the applicants' immediate return did not infringe the ECHR, thereby revising the Chamber judgment of 3 October 2017, which found violations of the prohibition of collective expulsions and the right to an effective remedy²⁷.

²¹ See Government submission in *ND and NT v. Spain*, ECtHR, para 91; see, for more developments, “Walls and Fences” *infra*.

²² See Government's arguments in Spanish Constitutional Court, judgement of 19 November 2020, case no. 2896/2015, ECLI:ES:TC:2020:172.

²³ See, e.g., *Mandatos del Relator Especial sobre los derechos humanos de los migrantes; de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; de la Relatora Especial sobre la situación de los defensores de los derechos humanos y del Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes*, 14 April 2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26327> See also Amnesty International, “Fear and Fences, Europe's approach to keeping refugees at bay”, 2015, <https://www.amnesty.org/en/documents/eur03/2544/2015/en/> or Human Rights Watch, “Spain: Halt Summary Pushbacks to Morocco”, 18 August 2014, <https://www.hrw.org/news/2014/08/18/spain-halt-summary-pushbacks-morocco>

²⁴ FRA, Fundamental Rights Report – 2024, June 2024, available at <https://fra.europa.eu/en/publication/2024/fundamental-rights-report-2024>, esp. pp. 98-99.

²⁵ CEAR, “ONG piden investigar el posible uso de fondos europeos en vulneraciones de derechos humanos”, Press Release 10 May 2023, available at <https://www.cear.es/noticias/fondos-europeos-vulneraciones-derechos-frontera-sur/>

²⁶ *ND and NT v Spain* (Grand Chamber), no. 8675/15 and 8697/15. For a comment and its contextualisation in the pushback practices in Spain, see, for instance, Sánchez Legido, A., “Las devoluciones en caliente españolas ante el Tribunal de Estrasburgo: ¿apuntalando los muros de la Europa fortaleza?”, *Revista Española de Derecho Internacional*, 72(2), 2020, pp. 235-259.

²⁷ *ND and NT v Spain* (third section), no. 8675/15 and 8697/15.

Complaints and legal actions at the domestic level are numerous, both among civil society organisations and NGOs on migrants and refugees' protection²⁸, before the Spanish Ombudsman and before Spanish courts, as reflected in the case-law analysed within this project.

Most importantly, the Spanish Constitutional Court declared the Additional Tenth Provision of the Spanish Aliens Act as amended by Organic Law 4/2015 formalising rejections at the border to be in conformity with the Spanish Constitution provided these rejections are applied to individualized entries; they are subject to full judicial control; and that international obligations are respected. Nonetheless, in light of its precise content, this judgment can be considered, by declaring a conditional constitutionality, to discredit hot returns²⁹.

14. Externalization: The execution of pushbacks or hot returns by Spanish agents imply the involvement of Moroccan authorities. Spanish State security forces hand down returned individuals to Moroccan agents at the border through direct and physical contact at the fences (normally through the intermediate gates located at various points alongside the fence, which can only be used by the border agents). Moroccan authorities are also involved through their actions aimed at impeding, usually through the use of violence, that individuals approach and cross the fence in the first place³⁰.

15. Technology: The role played by technology in the pushback practice is related to the features and functioning of the multi-fence system at the Spanish border with Morocco, which is explained below under 'Walls and Fences'.

16. Other: Special attention to the collective expulsion of unaccompanied minors based on the direct application of migration agreements:

A specific pushback incident at the Spanish–Moroccan border warrants particular attention due to its distinctive features and its implications for access to asylum and child protection guarantees. It concerns the collective return of unaccompanied minors who had irregularly entered Spanish territory and whose removal to Morocco was carried out through the direct application of a bilateral migration agreement, without the initiation of individual administrative procedures or the application of the safeguards required under domestic and international law. Unlike the immediate “hot returns” described above, these measures did not consist of instant rejections at the border. Rather, they involved collective returns implemented after the minors had already entered Spanish territory and had come under the responsibility of the Spanish authorities, but without any individualized assessment of their personal circumstances, protection needs, or best interests, as later confirmed by judicial review.

The events followed the massive irregular entry into Ceuta in May 2021, which took place in the context of a diplomatic crisis between Spain and Morocco. According to press reports, several thousand people entered the enclave over a short period of time, among whom approximately 1,500 were minors. These minors were placed under the care of the regional authorities in the weeks following their arrival, pending

²⁸ See, e.g., APDHA, *Derechos Humanos en la Frontera Sur 2014*, March 2014, https://www.apdha.org/media/frontera_sur_2014_web.pdf; or CEAR, *Informe 2016: Las personas refugiadas en España y Europa*, https://www.cear.es/wp-content/uploads/2016/06/Informe_CEAR_2016.pdf For an updated coverage, see AIDA/ECRE Country Report Spain, 2023, 31 May 2024.

²⁹ Martínez Escamilla, M., “Las “devoluciones en caliente” en el asunto N.D. y N.T. contra España (Sentencia de la Gran Sala TEDH de 13 de febrero de 2020)”, *Revista Española de Derecho Europeo*, abril-septiembre 2021, pp. 309-337.

³⁰ A formal readmission agreement is in force between Spain and Morocco, whose personal scope only concerns third-country nationals and whose application in practice has been very controversial. Agreement between Spain and Morocco on movement of persons, transit and readmission of illegally entered foreigners, signed in Madrid on 13 February 1992 (*Acuerdo entre el Reino de España y el Reino de Marruecos relativo a la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente, firmado en Madrid el 13 de febrero de 1992*, BOE no. 100, 25 April 1992), provisionally applied since the date of signature; in force since 31 October 2012. Morocco usually accepts the readmission of its own nationals, although they are not formally covered by this agreement. See González García, I., “El Acuerdo España-Marruecos de readmisión de inmigrantes y su problemática aplicación: las avalanchas de Ceuta y Melilla”, *Anuario Español De Derecho Internacional*, 22, 2006, 255-284; El Diario.es, “La historia del acuerdo de devolución de migrantes a Marruecos que Pedro Sánchez ha sacado del cajón”, 25 August 2018, available at https://www.eldiario.es/desalambre/acuerdo-readmision-migrantes-marruecos-magrebies_1_1966985.html

decisions on the measures to be adopted³¹. In August 2021, Spanish and Moroccan officials agreed on the return of these minors to Morocco, invoking as a legal basis the Agreement between Spain and Morocco on cooperation in the prevention of illegal emigration of unaccompanied minors, their protection and their concerted return, of 6 March 2007³². Returns were carried out during that month in groups of several dozen minors³³. It was reported that no individual administrative return procedures was opened prior to these measures, nor were the procedural guarantees provided for under Spanish law on migration, asylum and the protection of children applied. In its subsequent judgment, the Tribunal Supremo held that the direct application of the 2007 bilateral agreement between Spain and Morocco could not replace the legally required individual procedures and safeguards, and concluded that the collective returns of unaccompanied minors carried out in this context were unlawful³⁴.

Pullbacks

Summary: Pullbacks carried out by Spain consist of joint maritime patrols with African partner countries, conducted mainly within the territorial waters of those States in order to prevent departures of migrants towards Spanish territory. These operations are based on bilateral cooperation agreements, most of which are informal and lack transparency, the formal agreement with Cape Verde on joint maritime surveillance constituting a notable exception. Although interceptions are formally executed by third-country authorities, Spanish agents participate through vessels, aircraft and operational support, including under Frontex-coordinated operations. By preventing individuals from leaving or intercepting them before they reach Spanish territory, this practice effectively bars access to asylum procedures.

1. Functioning: The practice of *pullbacks* undertaken by Spain consists of the deployment of joint maritime patrols involving the Spanish authorities and the law enforcement agents of certain African countries. These operations take place within the territorial waters of the latter and are aimed at preventing potential migrants from departing towards Spanish territory³⁵. This barrier prevents individuals from accessing asylum either because they are not allowed to abandon the territory of their country of origin, or because the Spanish authorities cannot properly receive their asylum application.

According to the Spanish Government³⁶, interception and seizure can only be executed by the authorities of the third country in whose territorial waters the joint patrol is being deployed. The Spanish intervention in joint patrolling is supposed to be limited to its participation through aircrafts and vessels, commanded by Spanish agents but having on board agents from the partner country in charge of operational tasks.

Also, the practice by which Moroccan authorities prevent and impede individuals from approaching and accessing the border fence at Ceuta and Melilla, hampering their access into Spanish territory, could be qualified as a ‘pullback practice’ if we take into account that Moroccan actions are influenced by Spanish/EU financing and equipment on border management³⁷.

³¹ El País, “5.000 personas llegan a nado a Ceuta en plena escalada de tensión diplomática con Marruecos”, 17 May 2021, <https://elpais.com/espana/2021-05-17/un-millar-de-personas-llegan-a-nado-a-ceuta-en-plena-escalada-de-tension-diplomatica-con-marruecos.html>

³² *Acuerdo entre el Reino de España y el Reino de Marruecos sobre la cooperación en el ámbito de la prevención de la emigración ilegal de menores no acompañados, su protección y su retorno concertado, hecho en Rabat el 6 de marzo de 2007*, BOE no. 70, 22.03.2013.

³³ El País, “Interior expulsa a otros 15 menores a Marruecos desde Ceuta”, 14 August 2021, <https://elpais.com/espana/2021-08-14/interior-expulsa-a-otros-15-menores-a-marruecos-desde-ceuta.html>

³⁴ See Supreme Court, judgment of 22 January 2024, procedure no. 6480/2022, ES:TS:2024:114 and its analysis in Part 2 of this National Report.

³⁵ As far as we know, Spanish police agents would not execute ‘autonomous’ pullbacks outside the framework of cooperation with other countries.

³⁶ And in the case of Cape Verde, according to the text of the treaty between Spain and this country of 2009, see “source” below.

³⁷ As noted before, Moroccan authorities accounted for their contribution to impeding thousands of migrants from entering into Ceuta and Melilla: see “Marruecos impidió en los últimos tres años a 10.000 migrantes entrar en Ceuta y Melilla”, Heraldo de Aragón, 7 December 2023, available at <https://www.heraldo.es/noticias/nacional/2023/12/07/marruecos-impidio-anos-migrantes-entrar-ceuta-melilla-1696094.html>

2. *Time:* This practice has been developed by Spain notably since 2005-2006 as a response to the so-called “migration crisis” or “cayuco crisis” endured especially by Spain and Italy at that time. There is evidence of the continuity of these joint surveillance efforts in very recent years³⁸, and even at present³⁹.

3. *Place:* Territorial waters of certain African partner countries such as Morocco, Mauritania, Senegal, Gambia, Cape Verde.

4. *Actors:* The main actors are Spanish law enforcement agents, more particularly the *Guardia Civil*, and border authorities of the third country. Frontex and its agents may also be involved when these pullback practices take place within the joint sea operations that the Agency organise and coordinate.

5. *Interaction:* Individuals who are prevented from approaching Spain as a destination country by these “pullback” practices cannot access the Spanish asylum system as they do not get to enter into Spanish territory or approach a border crossing point⁴⁰.

6. *Development:* Notably since 2005-2006, when a significant increase in arrivals of migrant flows by sea was identified in Spanish coasts, Spain started to establish operational cooperation on maritime border controls with certain African countries. The first joint sea patrols were nonetheless organised by Spain with Morocco already in 2003 in order to watch the areas of the Canary Islands and the Strait of Gibraltar. However, when migratory routes shifted from the North of Africa to the more distant coasts of Western Africa, Spain extended, in 2006, the negotiation of arrangements for joint patrolling purposes with other African countries. The Atlantis project and ‘Cabo Blanco’ Operation were developed since 2006 to fight against irregular migration coming from Mauritania. ‘Noble Centinela’ Operation was deployed, also in 2006, to patrol, with aerial and naval forces, the area between the Canary Islands and Cape Verde, Senegal and Mauritania, in cooperation with their respective authorities. Spain also launched in 2006 the Sea Horse Project, in order to fight against maritime migration in the routes towards Spain and including the participation of Morocco, Mauritania, Senegal, Gambia, Guinea Bissau and Cape Verde, as well as other EU Member States, such as Italy, Germany, France, Belgium and Portugal. Under Frontex coordination, HERA Operation was aimed at combatting irregular migration by sea directed to the Canary Islands from Western African countries and included, under Spanish leadership, the deployment of joint patrols with Mauritania, Senegal and Cape Verde. With the latter country, an international treaty was signed for this purpose in 2009 (see “source” below), while other arrangements and memoranda of understanding were the usual tool employed by Spain and other African countries to formalise these practices⁴¹.

As indicated under ‘time’ above, there is evidence of the continuity of these joint surveillance efforts at present. More recently, the Spanish Ministry of Interior has asked Frontex to be more involved in the patrolling of African waters, as it did during the migration crisis of 2006⁴². According to Frontex, the

³⁸ Spanish Ministry of the Interior, “El refuerzo del despliegue español en Senegal frena en un 46 por ciento las llegadas irregulares a Canarias”, Press release, 15 December 2023, available at <https://www.interior.gob.es/opencms/es/detalle/articulo/El-refuerzo-del-despliegue-espanol-en-Senegal-frena-en-un-46-por-ciento-las-llegadas-irregulares-a-Canarias/#:~:text=El%20despliegue%20de%20las%20Fuerzas,costas%20de%20Senegal%20y%20Gambia>.

³⁹ SER, “Patrullas mixtas de Guardia Civil y Gendarmería Real de Marruecos contra la inmigración irregular”, 26 March 2025, <https://cadenaser.com/canarias/2025/03/26/patrullas-mixtas-de-guardia-civil-y-gendarmeria-real-de-marruecos-contra-la-inmigracion-irregular-ser-lanzarote/>

⁴⁰ Art. 16 and 21 of the Spanish Organic Law on Asylum and Subsidiary Protection / *Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*, BOE no. 263, 31 October 2009 (hereinafter, Spanish Asylum Act).

⁴¹ See García Andrade, P., *La acción exterior de la Unión Europea en materia migratoria. Un problema de reparto de competencias*, Tirant lo Blanch, 2015, p. 374, 378-379.

⁴² “Grande-Marlaska describes Frontex’s work to control migration to the Canary Islands as “disappointing”, The Diplomat in Spain, 28 September 2024, available at <https://thediplomatinspain.com/en/2024/09/28/grande-marlaska-describes-frontexs-work-to-control-migration-to-the-canary-islands-as-disappointing/>; “Grande-Marlaska choca con Frontex por Canarias: “Las respuestas que he recibido de la agencia son decepcionantes”, El País, 28 September 2024, available at <https://elpais.com/espana/2024-09-28/grande-marlaska-choca-con-frontex-por-canarias-las-respuestas-que-he-recibido-de-la-agencia-son-decepcionantes.html> See also SER, “Patrullas mixtas de Guardia Civil y Gendarmería Real de Marruecos contra

Agency would need a formal request from Spain and, most importantly, the signature of an Status Agreement between the EU and the African country in whose territory the operation would be deployed⁴³.

7. *Rationale*: The Government's stated aims relate to reinforcing control of irregular migration, particularly on the West Atlantic route, by reducing the number of arrivals by sea. The Spanish Government also puts the accent on shared responsibility with partner countries in the objectives of dismantling criminal networks on migrant smuggling, the obligations set by international law of the sea and the prevention of loss of lives at sea⁴⁴.

8. *Legal Status*: Individuals affected by this barrier do not enjoy any legal status under Spanish legislation, as they do not enter into Spanish territory or present themselves at a border crossing point. However, according to the ECtHR's settled case-law, the decisive criterion is whether Spanish agents exercise effective control over the individuals concerned⁴⁵. If they do so, those individuals may fall within Spain's jurisdiction for the purposes of Article 1 ECHR, even where the operation takes place on board a partner country's vessel outside Spanish territory.

9. *Specific Impact*: This practice certainly affects vulnerable people, such as minors (including unaccompanied minors) and women, who are more exposed to perils at sea.

10. *Reach*: The Government frequently publishes figures on the number of intercepted vessels and persons, as well as on the reduction in arrivals in Spain, particularly in the Canary Islands. It often attributes this decrease to maritime surveillance cooperation with countries of origin and transit⁴⁶, describing it as a means of preventing "irregular departures" towards the Canary Islands.

The reduction of irregular arrivals from partner countries often results in the diversion of migration routes (e.g. a decrease in arrivals from Morocco along the Andalusian coast may lead to an increase in arrivals in the Canary Islands), including towards routes that pose greater risks to migrants' lives.

11. *Source*: Joint maritime surveillance is carried out on the basis of bilateral agreements signed between Spain and the third country concerned. Most of these agreements are informal and, in many cases, have not been made public. An exception is the formal international treaty concluded between Spain and Cape Verde on the joint surveillance of maritime spaces under the sovereignty and jurisdiction of Cape Verde⁴⁷.

12. *Justification*: The only international treaty concluded by Spain for this purpose (Spain-Cape Verde, 2009) states that its objectives include contributing to the maintenance of security at the maritime areas under Cape Verdian sovereignty, to the fight against organised crime, including smuggling of migrants, and combatting 'illegal emigration'.

13. *Domestic and International Reactions*: Academic literature has condemned the practice of pullbacks because of the restrictions it imposes on migrants' fundamental rights, particularly the right to leave any country,

la inmigración irregular", 26 March 2025, <https://cadenaser.com/canarias/2025/03/26/patrullas-mixtas-de-guardia-civil-y-gendarmeria-real-de-marruecos-contr-la-inmigracion-irregular-ser-lanzarote/>

⁴³ As foreseen in art. 73(3) of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019.

⁴⁴ See, recently, Spanish Ministry of the Interior, "Grande-Marlaska: "El principal objetivo de la política migratoria debe ser la prevención", Press Release, 31 March 2025, <https://www.interior.gob.es/opencms/va/detalle/articulo/Grande-Marlaska-El-principal-objetivo-de-la-politica-migratoria-debe-ser-la-prevencion/>. See also El País, "Interior pacta con Marruecos el refuerzo de las patrullas conjuntas para frenar la llegada de pateras", 7 May 2022, <https://elpais.com/espana/2022-05-07/interior-pacta-con-marruecos-el-refuerzo-de-las-patrullas-conjuntas-para-frenar-la-llegada-de-pateras.html>

⁴⁵ ECtHR, *Al-Skeini and others v United Kingdom*, app. 55721/07 7.7.2011; *Hirsi-Jamaa c. Italy*, app. 27765/09, 23.02.2012.

⁴⁶ See, e.g., Spanish Ministry of the Interior, "El refuerzo del despliegue español en Senegal frena en un 46 por ciento las llegadas irregulares a Canarias, 15 December 2023, <https://www.interior.gob.es/opencms/es/detalle/articulo/El-refuerzo-del-despliegue-espanol-en-Senegal-frena-en-un-46-por-ciento-las-llegadas-irregulares-a-Canarias/>

⁴⁷ Agreement between the Kingdom of Spain and the Republic of Cabo Verde on joint surveillance of maritime areas under the sovereignty and jurisdiction of Cabo Verde, done at Praia on 21 February 2008 / *Acuerdo entre el Reino de España y la República de Cabo Verde sobre vigilancia conjunta de los espacios marítimos bajo soberanía y jurisdicción de Cabo Verde, hecho en Praia el 21 de febrero de 2008*, BOE no. 136, 5 June 2009, p. 47545.

including one's own⁴⁸, and the obstacle it creates to the right to seek asylum, especially for those who are prevented from leaving their country of nationality⁴⁹. More generally, this control of emigration towards Spain has been the subject of sustained criticism⁵⁰.

14. *Externalization*: As explained under “source” above, this practice of maritime surveillance is executed on the basis of bilateral agreements signed by Spain with the third country concerned. Most of these agreements are informal and, in many cases, do not enjoy publicity. The international agreement between Spain and Cape Verde on the joint surveillance of maritime spaces under the sovereignty and jurisdiction of Cape Verde (BOE 136, 5 June 2009) constitutes an exception⁵¹.

15. *Technology*: Spanish border authorities increasingly deploy a combination of digital tools -including drones, thermal cameras, radars and software for vessel detection- to monitor maritime approaches to Spanish territory, notably in the Canary Islands where sea surveillance technologies aim to detect small boats before they reach Spanish waters. However, the implementation remains uneven and technologically limited overall⁵². Systems like the SIVE, while useful for detecting vessels near the coast, do not constitute “interception technologies” capable of supporting pullbacks in third-country or international waters; rather, they primarily enhance early detection and surveillance with a view to preventing arrivals on Spanish coasts and, for that reason, are included in the following section on “Walls and Fences”.

Walls and fences

Summary: The Spanish–Moroccan land borders at Ceuta and Melilla are secured by a multi-fence system located within Spanish territory and equipped with advanced surveillance technologies. Although under full Spanish jurisdiction, the Government applies however an operational concept of border, whereby individuals intercepted between the outer and inner fences are considered not to have entered Spanish territory and thus fall outside the scope of immigration and asylum legislation. The fence is not an authorised border crossing point, and asylum applications can only be lodged at designated border posts or once on Spanish territory. In practice, enhanced border controls, cooperation with Moroccan authorities and pushback practices prevent individuals from reaching those points, creating a disconnect between interception and access to asylum that effectively restricts the ability to request international protection.

1. *Functioning*: At the Spanish–Moroccan border at the autonomous cities of Ceuta and Melilla, the Spanish authorities have erected a multi-fence barrier, composed of two outer six meter high fence and a three meter high fence located in between. The length of the fence in Melilla is of 12 km, while the one in Ceuta extends to 8,2 km. There are gates at regular intervals (to be used by border agents, but not serving as authorised border crossing points) and the whole fence is surveilled through a CCTV system, including infrared cameras and movement sensors. The fence system has been built at the land border separating

⁴⁸ Markard, N., “The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries”, *European Journal of International Law*, 2016, vol. 27, no. 3, pp. 591–616; García Andrade, P., “Extraterritorial Strategies To Tackle Irregular Immigration By Sea: A Spanish Perspective”, in Ryan, B. and Mitsilegas, V. (eds.), *Extraterritorial Immigration Control. Legal Challenges*, Brill/Nijhoff, 2010, pp. 305–340.

⁴⁹ Gammeltoft-Hansen, T., “The refugee, the sovereign and the sea: EU interdiction policies in the Mediterranean”, *DIIS Working Paper* no 2008/6, 19–20.

⁵⁰ See, e.g., Informe del Observatorio de Derechos Humanos de Caminando Fronteras, “Derecho a la vida 2025”, December 2025, https://caminandofronteras.org/wp-content/uploads/2025/12/Monitoreo-Derecho-a-la-Vida-2025-ES_Web.pdf; Human Rights Watch, “‘They Accused Me of Trying to Go to Europe’ Migration Control Abuses and EU Externalization in Mauritania”, 27 August 2025, <https://www.hrw.org/report/2025/08/27/they-accused-me-of-trying-to-go-to-europe/migration-control-abuses-and-eu> and Human Rights Watch’s Submission to the UN Special Rapporteur on the Human Rights of Migrants, 19 December 2025, <https://www.hrw.org/news/2025/12/19/human-rights-watches-submission-to-the-un-special-rapporteur-on-the-human-rights-of>; El País, “El control policial en África impide la emigración hacia Canarias de 8.000 personas”, 3 November 2021, available at <https://elpais.com/espana/2021-11-03/la-vigilancia-en-los-paises-de-origen-impide-la-emigracion-hacia-canarias-de-8000-personas.html>

⁵¹ García Andrade, P., “Extraterritorial Strategies to Tackle Irregular Immigration By Sea: A Spanish Perspective”, op. cit.

⁵² Euromed Rights and AlgoRace, *Digital technologies for migration control at the Spanish southern border*, 2024, https://euromedrights.org/wp-content/uploads/2024/10/240826_Euromed_TechBorders_EN.pdf

Ceuta and Melilla from Morocco. The fence is located within Spanish territory and is under the full jurisdiction of Spain.

2. *Time*: See “development” *infra*.

3. *Place*: The fence system is located in Ceuta and Melilla, the two Spanish enclaves in Morocco; they are Spanish autonomous cities. Ceuta is located at the African shore of the Strait of Gibraltar, while Melilla, at the shore of the Mediterranean Sea, is located at the Rif region.

4. *Actors*: Political responsibility for the building and management of the border lies in the Ministry of Interior. Control of entry and exit of national territory, as well as functions foreseen in the legislation on aliens, migration and asylum correspond to the National Police, while the surveillance and custody of the borders, coasts, ports and airports pertain to the *Guardia Civil*, corps of agents of military nature⁵³.

5. *Interaction*: The multi-fence system at the Spanish–Moroccan land borders of Ceuta and Melilla constitutes a physical barrier that impedes access to Spanish territory. It gives rise to significant practical and legal obstacles to accessing the asylum procedure. Asylum applications are not to be lodged at the fence itself, as it is not an authorised border crossing point, and may only be formally submitted at designated border posts⁵⁴, or once on Spanish territory. In practice, however, enhanced border controls and cooperation with Moroccan authorities frequently prevent individuals in need of international protection from reaching those authorised points. This results in a structural disconnect between the place where individuals are intercepted and the place where they are legally able to request asylum. Combined with pushback practices by Spanish authorities, this effectively restricts access to the asylum procedure.

6. *Development*: An early version of this multiple fence system was erected in 1995 and then strengthened and modernised in 2005, when the controversial *concertina* wire (wire spirals with blades) were installed⁵⁵. In 2007, the concertina were replaced with three-dimensional wire rope, but in 2013 the concertina were reintroduced at some parts of the Melilla border. Later, in 2019–2020, the whole fence system was reinforced, while the concertina and the three-dimensional wire fences, installed in 2005 around the entire perimeter, were replaced with other safer and less harmful elements (such as tubular structures in the form of “inverted combs” and metal rollers). Also, a new closed CCTV system, including thermal cameras, along the perimeter and automated facial recognition systems at border posts (El Tarajal (Ceuta) and Beni Enzar, Barrio Chino, Mariguari y Farhana (Melilla)) were installed. In 2022, the Ceuta border perimeter was reformed, including reinforcing some points of the outer fence with anti-climbing mesh, demolishing three intermediate guardhouses located between the fences, and installing airlocks. The Melilla border was also reinforced in 2022 with new fixed surveillance stations on the Moroccan side of the perimeter. The fence has been elevated from 6 to 10 meters at some points. The budget for the reform approved in 2019 (the first undertaken since 2005) was close to 50 million euros⁵⁶.

⁵³ Art. 12 A and B of the Spanish Organic Law 2/1986 on the Corps and Forces of State Security / *Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad*, BOE no. 63, 14 March 1986.

⁵⁴ Individuals arriving at the official or authorised land border crossing points (eg. El Tarajal in Ceuta, Beni Enzar in Melilla), where Spanish authorities check documents and allow legal crossings – can inform the Guardia Civil that they wish to ask for asylum. The special border accelerated procedure (art. 21 of the Spanish Asylum Act) applies at that point.

⁵⁵ For a detailed account and analysis of the origins of the fence system in Melilla, see Acosta Sánchez, M., “Las fronteras terrestres de España en Melilla: delimitación, vallas fronterizas y “tierra de nadie””, *Revista Electrónica de Estudios Internacionales*, 28, 2014.

⁵⁶ The Plan for the strengthening and modernisation of the land border protection system dates from 2019 (La Moncloa, Interior, press release, 18 January 2019, <https://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/180119-enlaceceutaymelilla.aspx>; La Moncloa, Interior, press release, 15 November 2019, <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/interior/Paginas/2019/151119-ceutaymelilla.aspx>); the execution of its last part was approved in July 2022: see Spanish Council of Ministers, 19 July 2022, available at https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220719_cc.aspx; Spanish Ministry of the Interior, Press Release, 19 July 2022, available at <https://www.interior.gob.es/opencms/eu/detalle/articulo/El-Consejo-de-Ministros-aprueba-las-ultimas-reformas-de-modernizacion-de-la-frontera-de-Ceuta/>).

7. *Rationale:* The rationale of the fence system lies on controlling the security of the border, and fighting against irregular entries and smuggling networks. The modernisation and strengthening works are aimed, according to the Government, at reinforcing security at the border area and responding to the technical needs identified by law enforcement agents.

See also under “Technology” the reasons motivating the establishment of SIVE.

8. *Legal Status:* The *Guardia Civil* border control operations protocol of 26 February 2014 (*Protocolo de actuación de control fronterizo de la Guardia Civil*) introduced an operative concept of border:

“With this system of fences, there is an objective need to determine when illegal entry has failed and when it has taken place. This requires defining the line which delimits the national territory, for the sole purpose of the rules governing aliens, a line which takes the physical form of the fence in question. Hence, where attempts by migrants to cross this line illegally are contained and repelled by the law-enforcement agencies responsible for controlling the border, no actual illegal entry is deemed to have taken place. Entry is deemed to have been effected only where a migrant has penetrated beyond the above-mentioned internal fence, thereby entering the national territory and coming within the scope of the rules governing aliens...”⁵⁷.

As a consequence, the Spanish Government considers that people who have crossed the outer fence of the Spanish border (from the Moroccan side) but stayed in that intermediate zone without having penetrated beyond the internal fence, have not entered Spanish territory, and are thus not within the scope of Spanish legislation on aliens. According to the Government, they do not enjoy any specific legal status, as they have not come under Spanish jurisdiction (this would start only once the internal fence is crossed). At the maritime border and according to the same 2014 Protocol, the operative concept of border, managed by the Government, means that the border line corresponds to the place where the barrier of *Guardia Civil* agents is located.

However, as recognised by certain Spanish courts, this is a fictional border as far as the scope of application of the legislation on aliens is concerned. According to the Provincial Court of Melilla, the border itself is a factual element not regulated, nor prohibited by law⁵⁸, while a First Instance and Instruction Court of Melilla found it to be illegal, as contrary to Spanish international commitments⁵⁹.

9. *Specific Impact:* Use of force by authorities at the fence system, in addition to falls and other incidents related to the aggressive features of the fence itself, may impact more seriously on vulnerable groups, such as children, elder or sick people.

10. *Reach:* According to the data provided by the Spanish Ministry of Interior on its reports on irregular immigration into Spain⁶⁰, the numbers of immigrants arriving in Ceuta and Melilla by land are the following: 2647 in 2024; 1234 in 2023; 2289 in 2022; 1845 in 2021; 1755 in 2020; 6346 in 2019; 6800 in 2018; 5863 in 2017.

Increasing the security of the border protection system in Ceuta and Melilla and the resulting decrease in irregular crossings through these land borders, has generally led to an increase in the number of migrants and refugees arriving by sea in the Canary Islands.

⁵⁷ This extract from the Protocol was included at the ECtHR judgment on ND, NT, 2020, since the text of the original protocol is not publicly available.

⁵⁸ See Provincial Court of Melilla, judgment of 7 April 2015, action no. 437/2014, ECLI:ES:APML:2015:1A. See its analysis under Part 2 of this National Report.

⁵⁹ At the first instance, the order of the First Instance and Instruction Court of Melilla, 11 September 2014, found this operative concept to be illegal, since it contradicted international commitments between Spain and Morocco on border delimitation and thus art. 96 of the Spanish Constitution. The fence system is built within Spanish territory and the border is therefore demarcated by the outer fence, determining the application of Spanish jurisdiction and legislation.

⁶⁰ These “balances” can be accessed here: <https://www.interior.gob.es/opencms/es/prensa/balances-e-informes/>

11. *Source:* The construction of the fence system, its reinforcement and modernisation have usually been approved through agreements of the Council of Ministers. See under “Development”.

12. *Justification:* According to the Government’s Plan to strengthen and modernize the land border protection system in the autonomous cities of Ceuta and Melilla of 2019, the objective of this border system is to increase prevention of irregular immigration, improve the efficiency and security of agents of the State Security forces in charge of the surveillance and control of those areas, and to ensure full respect of human rights obligations.

13. *Domestic and International Reactions:* For reactions to the way in which the Spanish agents manage the border with Morocco, see “Domestic and International Reactions” under “Pushbacks” *supra*.

Tragedies occurred at those borders, such as the events of 24 June 2022 in Melilla when around 2000 people, mostly from Sudan, tried to enter the fence through the border post of Barrio Chino and around 37 persons died and many others were injured, could be related to the presumed violent conduct of Spanish and Moroccan agents in charge of the border⁶¹. This tragedy attracted considerable domestic and international attention⁶².

14. *Externalization:* Moroccan authorities, particularly the Moroccan Ministry of Interior, have claimed that they have impeded, along three years, 70 attempts of massive assaults to the border fence with Spain in Ceuta and Melilla, attempts in which around 10.000 migrants would have been involved⁶³. This seems to be the result of the Spain-Morocco cooperation on the fight against irregular migration and border management over the years, as both governments have recently agreed to intensify⁶⁴.

15. *Technology:* As regards surveillance technologies, Spain’s land borders with Morocco in Ceuta and Melilla have been reinforced with the use of drones, thermal cameras, radars and facial recognition systems. Software designed to detect vessels and people is being used on the maritime borders of the Canary Islands. Recourse to technology in the surveillance of borders includes the use of the Spanish integrated system of

⁶¹ El País, “¿Qué sucedió en la frontera de Melilla? El paso a paso de la tragedia”, 3 July 2022, <https://elpais.com/espana/2022-07-03/que-sucedio-en-la-frontera-de-melilla-el-paso-a-paso-de-la-tragedia.html>

⁶² ECRE, “Spain: Government Sticks to Script on Melilla Massacre in Face of Mounting Evidence Disputing it – MPs Call for Marlaska to Resign, Spain and Morocco Continue Strengthening Relations”, 2 December 2022, <https://ecre.org/spain-government-sticks-to-script-on-melilla-massacre-in-face-of-mounting-evidence-disputing-it-mps-call-for-marlaska-to-resign-spain-and-morocco-continue-strengthening-relations/>; UN Committee on Migrant Workers, “UN committee urges prompt investigation into deaths of migrants at Moroccan-Spanish border”, OHCHR Press Release, 28 June 2022, <https://www.ohchr.org/en/press-releases/2022/06/un-committee-urges-prompt-investigation-deaths-migrants-moroccan-spanish>; Amnistía Internacional, “Tragedia en la valla de Melilla: Un año de impunidad tras la masacre”, 26 June 2023, <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/tragedia-en-la-valla-de-melilla-nunca-mas/>; Human Rights Watch, “Morocco/Spain: Horrific Migrant Deaths at Melilla Border”, 29 June 2022, <https://www.hrw.org/news/2022/06/29/morocco/spain-horrific-migrant-deaths-melilla-border>; African Union, “African Union calls for probe after dozens die at Morocco-Spain land border”, 27 June 2022, <https://www.aa.com.tr/en/africa/african-union-calls-for-probe-after-dozens-die-at-morocco-spain-land-border/2623212>; The Guardian, “The Melilla massacre: how a Spanish enclave in Africa became a deadly flashpoint”, 29 August 2023, <https://www.theguardian.com/world/2023/aug/29/the-melilla-massacre-spanish-enclave-africa-became-deadly-flashpoint-morocco>

⁶³ “Marruecos impidió en los últimos tres años a 10.000 migrantes entrar en Ceuta y Melilla”, Heraldo de Aragón, 7 December 2023, available at <https://www.heraldo.es/noticias/nacional/2023/12/07/marruecos-impidio-anos-migrantes-entrar-ceuta-melilla-1696094.html>

⁶⁴ See Joint Declaration issued after the XII High Level Meeting Morocco-Spain, 1-2 February 2023, available at <https://www.lamoncloa.gob.es/presidente/actividades/Documents/2023/020223-Declaracion-Espana-Marruecos.pdf>. This was reiterated at the XXII Meeting of the Permanent Group on Spanish-Moroccan Migration Affairs, 21 October 2024, Marrakech: The Diplomat, “Spain and Morocco agree to fight against migrant trafficking gangs”, 24 October 2024, available at <https://thediplomatinspain.com/en/2024/10/24/spain-and-morocco-agree-to-fight-against-migrant-trafficking-gangs/>. In particular, the Secretary of State for Security highlighted, at that meeting, the crucial work undertaken by Moroccan security forces in the areas near the border perimeters in Ceuta and Melilla. It was highlighted how the intervention of Moroccan agents made it possible to neutralize calls made on social media to organize mass incursions into the two autonomous cities in September 2024.

external surveillance (SIVE, *Sistema Integrado de Vigilancia Exterior*), as well as the main systems of biometrical data established by the EU (EURODAC, SIS and VIS).

Five fixed stations equipped with high resolution cameras, thermal cameras, laser lights and surveillance software have been installed in Melilla, at the end of 2023⁶⁵. The *Guardia Civil* also resorts to drones with artificial intelligence aimed at more efficient detections and planning inspections; laser lights at Melilla's port which, together with thermal cameras, assist in the positioning and interception of vessels or people in the waters⁶⁶.

SIVE is another technological tool used by the Government in the detection of vessels heading towards Spanish territory. SIVE, set up in the 2000s, consists of a system of fixed and mobile radars, video and infrared cameras for coastal surveillance and stations of control spread across the coast to manage the software to which the radars are connected. The control units are connected to the *Guardia Civil* centres of coordination, where alerts are visualized through digital maps. It has been installed in the Andalusian coast, the Canary Islands, Ceuta, the Eastern coast, the Galician coast and is projected to be expanded to the Balearic Islands.

The implementation of SIVE aims at long-distance detection of vessels approaching the Spanish coast, identifying the type of ship and its crew to check a possible illegal activity, coordinate the follow-up of the vessels and intercept them. The justification lies in the fight against criminal activities, including smuggling of migrants, trafficking of human beings or drug trafficking, and also in assisting irregular migrants and other people in distress at sea, one of the system's fundamental objectives therefore being humanitarian. According to the Government, in facilitating the identification and quick assistance to the victims of irregular migration, SIVE not only discourages mafias from migrant smuggling, but also saves lives. As regards its effects, the installation of the SIVE contributed to a shift in migratory routes, for example from the shorter route across the Strait of Gibraltar, where the SIVE was first deployed, to the longer and more dangerous route towards the Canary Islands. As the system was subsequently expanded, migratory routes shifted again, this time towards Ceuta and Melilla⁶⁷.

Future applicability of the Entry-Exit System and the installation of a facial recognition system are foreseen at the borders with Morocco in Ceuta and Melilla.

Detention

Detention I - Asylum rooms or areas in the Madrid-Barajas airport

Summary: Non-admission rooms or “asylum rooms” at the Spanish airport of Madrid-Barajas host applicants for international protection under the border procedure, where delays in registration and processing generate situations of *de facto* detention. Although Spanish law allows a maximum of four days to decide through the accelerated border procedure on asylum, this deadline is frequently exceeded, with applicants retained there for longer periods, without access to Spanish territory or a clear legal status. Overcrowding and insalubrity aggravated this situation, especially since the rise in applications from 2017 and again from summer 2023.

1. *Functioning:* “Asylum rooms” in certain Spanish airports, especially in Madrid- Barajas, host those individuals applying for international protection at the border post within the airport facilities, in which the border accelerated procedure applies. The delays in the registration and processing of the applications lead to an informal situation of detention, since applicants cannot abandon those areas, nor access Spanish territory.

2. *Time:* See under “Development” *infra*.

⁶⁵ ABC, “Thales y Trablisa dotan a Melilla de un sistema inteligente de control de fronteras”, 14 December 2023, available at <https://www.abc.es/espana/thales-trablisa-dotan-melilla-sistema-inteligente-control-20231214203739-nt.html>

⁶⁶ EuroMed Rights-AlgoRace “Digital technologies for migration control at the Spanish Southern border”, 2024, available at https://www.algorace.org/wp-content/uploads/2024/10/AlgoRace_Euromed_TechBordersReport_EN.pdf

⁶⁷ Amnesty International, “Fear and fences. Europe’s approach to keeping refugees at bay”, November 2015, pp. 14-15.

3. *Place:* Asylum rooms or areas at Madrid-Barajas airport (also known as rooms of inadmitted or rejected) in each one of the terminals⁶⁸.

4. *Actors:* National agents in charge of these asylum areas at the Madrid-Barajas airport are the Spanish national police and the Spanish Office of Asylum and Refuge (OAR).

5. *Interaction:* Asylum applications submitted at border posts, including thus at international airports, are governed by art. 21 of the Spanish Asylum Act, which allows the Ministry of Interior to declare inadmissible or reject the applications within a deadline of 4 days. This deadline is not being respected, as persons are usually retained in those airport areas up to 10 or 15 days, which leads to situations of *de facto* detention. In addition, the lapse of 4 days without notification to the applicant has positive silence effects, leading to the admissibility of the asylum request and its processing through the ordinary procedure instead of the border procedure⁶⁹. Asylum seekers at those facilities cannot access the reception conditions foreseen in Directive (EU)2013/33, now replaced by Directive 2024/1346

This barrier is connected to the one related to “Airport Transit Visas”, as the Government usually resorts to the latter in order to reduce the increase in numbers of asylum seekers present at the airport and coming from certain third countries.

6. *Development:* The increase in asylum applications lodged at the Madrid-Barajas airport (first reported in 2017 and, more recently, since the summer of 2023) has given rise to serious overcrowding and insalubrity in those facilities. The shortage of personnel responsible for registering international protection applications at the border post of the airport (Spanish Asylum and Refugee Office and National police), together with the logistic limitations of those areas, lead to delays in the registration of requests, resulting in the detention of the persons concerned.

In January 2024, a fourth room for receiving asylum applicants was added to the three existing rooms at Madrid-Barajas Airport⁷⁰, in order to alleviate the overcrowding and unsanitary conditions that had been reported in those facilities⁷¹.

7. *Rationale:* The Spanish Ministry of Interior has justified the fitting out of a new area for asylum seekers at the Madrid-Barajas airport and the increase of police agents deployed at the airport on the grounds that these measures were necessary to improve the conditions under which protection seekers remain while their applications are being processed⁷². The Administration has also explained how the requirement of

⁶⁸ These rooms also exist in other Spanish airports such as El Prat-Barcelona and Málaga, but the *de facto* situation of detention caused by overcrowding has only been denounced with regard to Madrid-Barajas.

⁶⁹ Art. 21.5 of the Spanish Asylum Act.

⁷⁰ Ministry of the Interior, “Habilitada una nueva sala en Barajas para atender a los solicitantes de protección internacional”, 25 January 2024, <https://www.interior.gob.es/opencms/ca/detalle/articulo/Habilitada-una-nueva-sala-en-Barajas-para-atender-a-los-solicitantes-de-proteccion-internacional/>

⁷¹ As of spring 2025, according to new information, the asylum rooms of the Madrid-Barajas airport appear not be longer overcrowded. However, the situation at the airport is critical once again since there were around 500 homeless people living at the terminals, creating safety and hygiene issues. This is seemingly also affecting undocumented foreigners, including individuals who requested asylum at the airport. Nevertheless, this constitutes a controversial issue between the state and the regional administration, the former argue they are homeless individuals in need of social assistance to be provided by the municipal and regional authorities, while the latter insisted in the presence of asylum seekers and thus attributed responsibility to the central government. La Vanguardia, “Barajas tiene 32 personas tramitando el asilo, frente a los casi 500 sin techo de las terminales”, 5 March 2025, available at <https://www.lavanguardia.com/local/madrid/20250305/10447438/barajas-32-personas-tramitando-asilo-frente-500-sintecho-terminales.html>; Europa Press, “El Gobierno dice que las personas sin hogar en Barajas son competencia de Madrid y que no hay solicitantes de asilo”, 13 May 2025, available at <https://www.europapress.es/epsocial/derechos-humanos/noticia-gobierno-dice-personas-hogar-barajas-son-competencia-madrid-no-hay-solicitantes-asilo-20250513134212.html>; El País, “Cómo acoger solicitantes de asilo era un orgullo para Almeida y después un tapón para ayudar a las personas sin hogar de Barajas”, 26 May 2025, available at <https://elpais.com/espana/madrid/2025-05-26/como-acoger-solicitantes-de-asilo-era-un-orgullo-para-almeida-y-despues-un-tapon-para-ayudar-a-las-personas-sin-hogar-de-barajas.html>

⁷² Spanish Ministry of the Interior, “Habilitada una nueva sala en Barajas para atender a los solicitantes de protección internacional”, 25 January 2024, <https://www.interior.gob.es/opencms/es/detalle/articulo/Habilitada-una-nueva-sala-en-Barajas-para-atender-a-los-solicitantes-de-proteccion-internacional/>

airport transit visas and the fight against criminal networks responsible for smuggling of migrants have been ways of dealing with this situation⁷³.

8. Legal Status: During their detention at the asylum rooms of the airport, people do not enjoy a particular status under Spanish law, as they have not been allowed to formally access Spanish territory (they rest at the international zone of the airport) and their asylum request has not been registered yet. The positive silence caused by the ellapsing of the deadline to respond to the applications leads, as explained above, to the obligation to process the request through the ordinary procedure and the granting, to the applicant, of an authorization of entry and provisional stay⁷⁴.

In January 2024, around 50 persons retained at the asylum rooms of the Madrid-Barajas airport were authorised by judicial order to be transferred to the Aliens Detention Center in Aluche. The Public Prosecutor's Office appealed the decision on the incorrect application of the aliens legislation and the treatment accorded to asylum seekers as irregular migrants, instead of the asylum legislation⁷⁵. The decision was annulled on 19 January 2024⁷⁶.

9. Specific Impact: This barrier specifically affects the physical and psychological situation of minors, pregnant women, and people requiring medical assistance.

CEAR reported that families with minors were sleeping on inflatable mattresses on the floor of common rooms and hallways, or sharing beds, with the consequent impact on their privacy and family life. The hygienic conditions of the facilities were also deteriorated without enough facilities for personal hygiene, a bedbug infestation, shortage of food, lack of basic furniture obliging people to have lunch in beds or on the floor. Conditions in these areas made also difficult to identify people with specific needs, such as minors, victims of trafficking, physical or mental health issues, or disabilities, against the differential treatment to which applicants are entitled under Article 46 of the Asylum Law⁷⁷.

10. Reach: In 2023, a rise of 25% in the number of applications for international protection submitted in border posts was reported, the majority of these being registered at the Madrid-Barajas airport⁷⁸. In December 2023, around 250 persons were in those areas, up to 390 in January 2024⁷⁹.

11. Source: According to art. 21 of the Spanish Asylum Act, when a third-country national, who does not meet the requirements for entry into Spanish territory, submits an application for international protection at a border post (such as at an international airport), the Minister of the Interior may declare the application inadmissible or reject it within a maximum period of four days from its submission. The lapse of this period, or that for deciding the administrative appeals against inadmissibility or rejection where no express decision has been notified, results in the application being examined through the ordinary procedure, and in the provision of an authorization of entry and provisional stay of the applicant. This means that, until then, the applicant is not entitled to enter into Spanish territory.

12. Domestic and International Reactions: Claims have been presented before the Spanish Ombudsman, who undertook visits to those areas. Recommendations were issued regarding the quality of food services (equal to those provided to detained persons for criminal grounds); the improvement of children facilities; the granting of reception conditions according to Directive 2013/33 through joint action of the National

⁷³ Appearance of the General Director of the Spanish National Police at the Spanish Congress, 14 October 2024, oral response available at <https://app.congreso.es/v1/15739672>

⁷⁴ Art. 21 Spanish law 12/2009 on Asylum and Subsidiary Protection.

⁷⁵ Público, “Autorizan el traslado al CIE de Aluche de medio centenar de solicitantes de asilo acogidos en Barajas”, 18 January 2024, <https://www.publico.es/sociedad/autorizan-traslado-cie-aluche-medio-centenar-solicitantes-asilo-acogidos-barajas.html>

⁷⁶ CEAR, *Informe 2024: Las personas refugiadas en España y Europa*, https://www.cear.es/wp-content/uploads/2024/06/CEAR_INFORME_2023.pdf, p. 77.

⁷⁷ *Ibid.*; Spanish Ombudsman, “Visita a las Salas de rechazados y solicitantes de protección internacional del Aeropuerto Adolfo Suárez Madrid-Barajas”, January 2024, available at <https://www.defensordelpueblo.es/resoluciones/visita-a-las-salas-de-rechazados-y-solicitantes-de-proteccion-internacional-del-aeropuerto-adolfo-suarez-madrid-barajas/>

⁷⁸ CEAR, n 76 above.

⁷⁹ *Ibid.*

Police, the Spanish Asylum and Refugee Office and AENA (the public company managing Spanish airports); and the provision of authorization for exceptional entry on humanitarian grounds⁸⁰.

In January 2024, the Red Cross staff, who was responsible, with financial assistance of the Spanish Ministry of Inclusion, Social Security and Migration, for providing psychosocial support to asylum seekers, guidance on the procedures, managing their transfers when they are finally allowed to enter Spanish territory, and identifying potential vulnerabilities, decided to temporarily suspend these services until the conditions of those areas allowed them to perform their functions adequately⁸¹.

It was reported that the magistrates of three Courts of Instruction of Madrid (6th, 19th and 20th), competent to control situations of detention of migrants under police custody⁸², have required the Spanish Ministry of the Interior and the National Police to adopt urgent measures to put an end to the overcrowding affecting international protection seekers at the Barajas airport⁸³.

Detention II – Access to asylum in detention facilities

Summary: Detention in CIEs functions as a barrier to effective access to asylum. Although detention is formally justified as a preventive, non-punitive measure to ensure the execution of removal procedures, individuals who apply for international protection from within these centres remain deprived of liberty while under the accelerated border procedure. Detention conditions and procedural shortcomings, including obstacles to registration, limited legal assistance and difficulties in preparing claims, hinder the effective exercise of the right to seek asylum.

1. Functioning: Those migrants who are subject to expulsion orders can be deprived of liberty in order to ensure the effectiveness of their expulsion and while the administrative decision is processed. Detention or internment is decreed by the Investigating Court and takes place at Immigration Detention Centres (*Centros de Internamiento de Extranjeros*, CIEs), spaces for administrative detention of migrants. When individuals detained in those centres wish to request international protection, the accelerated border procedure applies. Internment does not cease in that case and continues until an asylum admissibility decision is adopted. The situation of detention and the living conditions in CIEs may complicate real access to asylum.

2. Time: CIEs are currently in operation in Spain since the early 90s, when the first centres started to operate.

3. Place: In Spain, 7 CIEs are currently in operation, located in Madrid (CIE de Aluche), Barcelona (CIE de la Zona Franca), Valencia (CIE de Zapadores), Murcia (CIE de Sangonera la Verde), Algeciras (CIE de Algeciras), Las Palmas (CIE de Barranco Seco) and Tenerife (CIE de Hoya Fría)⁸⁴. A new CIE in Algeciras has been built, considered to be the biggest detention centre in Europe, and will start operating soon⁸⁵.

4. Actors: Direction, coordination and management of CIEs correspond to the Ministry of Interior, particularly to the General Directorate of the National Police, responsible for surveillance and safety within these centres⁸⁶. The Investigating Judge, as explained below in “Sources”, is competent to authorise, review

⁸⁰ See, among others, Spanish Ombudsman, complaint no 23037116.

⁸¹ EFE, “Cruz Roja se retira de Barajas ante la saturación en las salas de asilo desbordadas”, 22 January 2024, available at <https://efe.com/espana/2024-01-23/cruz-roja-salas-asilo-aeropuerto-barajas>

⁸² Article 62.6 of the Spanish Aliens Act states that the competent judge responsible for supervising the stay of foreign nationals in detention centres, as well as in non-admission facilities at the border is the Investigating Judge. That provision authorises the judge to visit those centres whenever he or she becomes aware of serious infringements or considers such a visit appropriate.

⁸³ El País, “Tres jueces piden a Interior medidas urgentes ante el hacinamiento de migrantes en el aeropuerto de Barajas”, 22 December 2023, <https://elpais.com/espana/2023-12-22/los-juzgados-responsables-de-los-cie-en-madrid-denuncian-hacinamiento-de-solicitantes-de-asilo-en-barajas.html>

⁸⁴ There are plans to build a CIE at the Alboran island in front of Melilla’s shores.

⁸⁵ Europa Sur, “El CIE más grande de España abre en pruebas en Algeciras y sin fecha de inauguración”, 15 November 2025, https://www.europasur.es/algeciras/nuevo-cie-grande-espana-abre-inauguracion_0_2005183232.html

⁸⁶ Art. 3 of the Spanish regulation on CIEs.

and cease detention, in addition to hearing complaints regarding human rights infringements from detainees and conducting visits.

5. Interaction: Detainees in CIEs are entitled to ask for asylum and their application will be processed through the border accelerated procedure. When declared admissible, the asylum procedure will continue outside these centres and be processed under the urgent procedure (art. 25.2 of the Spanish Asylum Act), in which deadlines are reduced by half (3 months to notify the decision). However, although detention is intended to be a measure of last resort, the deprivation of liberty of migrants in an irregular situation is generally the rule. Moreover, the conditions in CIEs make it more difficult to lodge asylum applications, which are not always adequately processed when filed there.

Complaints relate to access to the asylum application itself and its registration; the calculation of deadlines applicable to processing asylum requests in detention⁸⁷; limited access to legal assistance; and broader difficulties in adequately preparing the asylum application. In particular, according to the Spanish Ombudsman, the procedural arrangements in place at the CIE of Madrid hindered effective access to the asylum procedure. In several complaints, detainees expressed their intention to seek international protection, but their applications were not duly registered, and in some cases were expelled before their requests could be processed. The Ombudsman found that the informal “mailbox” system used for expressing intent to apply did not comply with administrative procedural law, provided no receipt or legal effect, and thus left detainees without guarantees of access to international protection⁸⁸. Furthermore, as documented by the *Servicio Jesuita a Migrantes* (SJM), in the CIE of Aluche (Madrid), individuals may request asylum, but without OAR’s assistance. The stress associated with deprivation of liberty, the risk of expulsion, difficulties in recounting traumatic experiences and inadequate interpretation can undermine asylum interviews, leading to negative assessments and restricting effective access to international protection⁸⁹.

6. Development: The first Spanish law on aliens, Organic Law 7/85, introduced the possibility of detaining migrants subject to expulsion decisions in dedicated centres or premises, although it did not specifically regulate those facilities. In practice, detention was initially carried out in police premises in late 80s, while CIEs began to operate in the early 90s and remain in operation today. The CIE of Aluche (Madrid), Zona Franca (Barcelona) and Zapadores (Valencia) were among the first centres to become operational, using existing police or military facilities and later being integrated into the formal CIE system, while the CIE of Barranco Seco (Las Palmas) was created in the late 90s as a reaction to the increase in arrivals of irregular migrants to the Canary Islands. The Spanish Alien Act (Organic Law 4/2000) subsequently provided a formal legal framework for these centres.

7. Legal Status: Third-country nationals detained in CIEs are qualified as migrants in irregular situation and subject to expulsion orders⁹⁰. As indicated above under “interaction”, persons detained in CIEs who lodge an asylum application from within the facility generally remain in detention while the Spanish authorities assess the admissibility of their claim. Although Spanish law formally recognises their status as asylum seekers from the moment the application is filed and suspends the execution of any ongoing removal action, in practice they do not benefit from the regular reception conditions applicable to asylum applicants in Spain.

⁸⁷ Zanón, L., “Los CIE: instrumentos de sufrimiento inútil”, *Cuadernos de Cristianismo i Justicia*, 2023, <https://www.cristianismeijusticia.net/sites/default/files/pdf/es232.pdf>, p. 11.

⁸⁸ Spanish Ombudsman, “Solicitudes de asilo en los centros de internamiento de extranjeros Sistema de registro”, Recommendation addressed to the Police Commissariat of Foreigners and Borders, Ministry of the Interior, complaint no. 18000504, 19 April 2018, <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/>

⁸⁹ SJM, “Informe CIE 2024: Raíces tras los muros”, 2025, available at <https://sjm.org/wp-content/uploads/2025/09/Informe-CIE-2024-SJM.pdf>, p. 41.

⁹⁰ Third-country nationals whose prison sentences have been judicially replaced by expulsion from the territory may also be interned in CIEs as an interim judicial measure (art. 89 of the Spanish Criminal Code).

8. Specific Impact: Minors cannot be detained in CIEs⁹¹, except where this results from right to preserve the family unit, which entitles a detained parent to have her minor children to stay in her company, provided that the Public Prosecutor's Office issues a favourable opinion and the centre has modules that ensure family unity and privacy⁹². Unaccompanied minors found in Spain must be placed under the care of the competent public child protection authorities in accordance with the Organic Law on the Legal Protection of Minors⁹³.

The UN Committee highlighted the poor conditions in migrant detention centres, particularly with regard to healthcare services and cases of self-harm⁹⁴.

9. Reach: The number of third-country nationals detained in CIEs has declined significantly since 2020, remaining at around 2000 individuals per year⁹⁵. The number of asylum applications submitted in CIE is low compared with the total amount of applications lodged in Spain; it reached 853 in 2024, 0,5% out of the total of asylum applications⁹⁶. However, no available sources have been found on the percentage of asylum applications submitted in CIEs that are declared admissible or result in the granting of international protection. The average length of detention in CIEs is 33.6 days⁹⁷.

10. Source: The reform of the Spanish Aliens Act carried out by Organic Law 14/2003 introduced Articles 62 *bis* to 62 *sexies*, which regulate key aspects of the operation of CIEs, including detainees' rights and obligations, information upon admission, the complaints procedures, security measures and the role of the director of the centre. These provisions were further developed in the aliens implementing regulations. In 2014, a specific regulation on CIEs was adopted⁹⁸.

According to Article 62 of the Spanish Aliens Act, third-country nationals who are liable to expulsion may be deprived of their liberty in order to ensure the effectiveness of the expulsion procedure, pending the completion of the administrative proceedings. Detention may be maintained only for as long as is necessary for the purposes of the proceedings, subject to a maximum period of 60 days.

Internment in CIEs can also be decreed regarding individuals subject to return orders of *devolución* (applicable to those who infringe an entry ban after being expelled and to those who attempt to irregularly enter the territory or are intercepted at the border), when that return cannot be executed within 72 hours⁹⁹.

Authorisation and termination of detention in CIEs must be ordered by the Investigating Court with jurisdiction over the place where detention takes place. The same judge is also competent to hear complaints from detainees regarding violations of their fundamental rights and may carry out visits to these centres whenever he or she becomes aware of a serious infringement or considers such visits appropriate.¹⁰⁰

⁹¹ Art. 62.4 of the Spanish Aliens Act.

⁹² Art. 62.bis.1.i) of the Spanish Aliens Act.

⁹³ Art. 62.4 of the Spanish Aliens Act.

⁹⁴ UN Human Rights Committee, "Concluding observations on the seventh periodic report of Spain" (ICCPR), CCPR/C/ESP/CO/7, August 2025, p. 9.

⁹⁵ 8.814 in 2017, 7.855 in 2018, 6.473 in 2019, 2.224 in 2020, 1.841 in 2021, 2.082 in 2022, 2.085 in 2023, 1.863 in 2024: SJM, "Informe CIE 2024: Raíces tras los muros", op. cit.. The number of detainees in CIEs from 2009 to 2012 ranged between 17.000 and 11.000 per year.

⁹⁶ 932 in 2022, 877 in 2023: see Spanish Ministry of the Interior, "Asilo en Cifras 2023" and "Asilo en Cifras 2024", <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>

⁹⁷ SJM, Informe CIE 2024, op. cit.

⁹⁸ Royal Decree 162/2014, of March 14, approving the regulations for the operation and internal rules of the foreigners detention centers/*Real Decreto 162/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros*, BOE no. 64, 15 March 2014. The Supreme Court annulled in 2015 some of its provisions, considering, for instance, that it did not respect the obligation set in the Returns Directive to provide a separate lodging for families susceptible of ensuring their privacy: Supreme Court, judgment of 10 February 2015, appeal procedure no. 373/2014.

⁹⁹ Art. 58.6 of Spanish Aliens Act.

¹⁰⁰ Art. 62.6 of the Spanish Aliens Act.

Detention in CIEs must be ordered by a reasoned judicial decision, following a hearing of the person concerned and the Public Prosecutor, and in accordance with the principle of proportionality. In deciding, the judge must assess the individual circumstances of the case, in particular the risk of absconding due to lack of a fixed address or identity documents, conduct aimed at obstructing or avoiding expulsion, and the existence of prior criminal convictions, administrative sanctions or pending proceedings. Where the person concerned suffers from a serious illness, the judge must also evaluate the risks that detention may pose to public health or to the individual's own health¹⁰¹.

The CIE Regulation includes, among the rights of detainees, the right to exercise the rights guaranteed under Spanish law without any limitations other than those inherent in detention, particularly where international protection is requested (Art. 16.2(c)). It also provides that organisations devoted to the protection of migrants and the assistance of asylum seekers may be authorised to visit the centre and conduct interviews with detainees (Art. 59.1), while members of the social assistance services must receive training in international protection (Art. 15.2).

The rules governing the asylum requests in CIEs are explained under “interaction” above.

11. Justification: As provided for in the Spanish regulation governing CIEs (Royal Decree 162/2014), these centres are defined as public, non-penal facilities under the authority of the Ministry of the Interior intended for the preventive and precautionary custody of foreign nationals, their justification being to ensure the execution of removal (expulsion or *devolución*) procedures. The regulation emphasises that the admission and stay in these centres is solely for the purpose of facilitating administrative procedures and ensuring the individual's availability during the process of removal, rather than for punitive purposes.

12. Domestic and International Reactions: CIEs are highly controversial in Spain, many organisations and associations regularly asking for their closure due to the prolonged deprivation of liberty and degrading conditions to which persons are subject to therein¹⁰², and because of the criminalisation and segregation of migrants they endanger¹⁰³. In particular, the Jesuit Service to Migrants (JSM) annually publishes a report on CIEs in Spain since 2010. Its latest report once again questions the exceptionality of internment according to the law, and its effectiveness. It highlights in particular the detention of people with roots in Spain and calls for enhanced monitoring mechanisms and greater transparency¹⁰⁴.

The Spanish Ombudsman asked the Ministry of Interior, in 2018, to immediately forward instructions to all CIEs in order to establish a system of registration of asylum applications in conformity with the EU Procedures Directive and the Spanish administrative procedural legislation. His recommendation stressed how the lack of access by interns to the asylum procedure may put their lives and integrity at risk¹⁰⁵.

¹⁰¹ Art. 62.1, second para., of the Spanish Aliens Act.

¹⁰² CEAR, “CEAR pide el cierre y desmantelamiento inmediato de los CIE”, 19 October 2016, <https://www.cear.es/uncategorized/cear-pide-el-cierre-y-desmantelamiento-inmediato-de-los-cie/>; Nueva Tribuna, “Varios colectivos exigen el cierre del CIE de Aluche por “vulneración sistemática” de los derechos humanos”, 12 March 2024, <https://www.nuevatribuna.es/articulo/sociedad/varios-colectivos-exigen-cierre-cie-aluche/20240312125044224741.html>; APDHA, “CIE. Ni en Algeciras, ni en ningún sitio”, 15 June 2024, <https://www.apdha.org/cie-ni-en-algeciras-ni-en-ningun-sitio/>.

¹⁰³ APDHA

¹⁰⁴ SJM, “Informe CIE 2024: Raíces tras los muros”, 2025, available at <https://sime.org/wp-content/uploads/2025/09/Informe-CIE-2024-SJM.pdf>

¹⁰⁵ Spanish Ombudsman, “Solicitudes de asilo en los centros de internamiento de extranjeros Sistema de registro”, Recommendation addressed to the Police Commissariat of Foreigners and Borders, Ministry of the Interior, complaint no. 18000504, 19 April 2018, <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/>

International reactions against detention practices in Spain are also evidenced¹⁰⁶, including complaints about the carceral conditions of CIEs, as well as physical ill-treatment and verbal violence against detainees¹⁰⁷.

Detention III - Detention in centres for the temporary attention to persons arriving by sea

Summary: People arriving by sea in Spain, mainly in the Canary Islands, are transferred upon disembarkation to centres for the temporary attention to foreigners, where they are detained under police authority. Although detention in these centres is legally limited to 72 hours, it is reported that this time limit is frequently exceeded and that conditions are degrading, including overcrowding, poor hygiene and lack of privacy. Deficiencies in access to legal counsel, interpreters and information may hinder the effective exercise of the right to seek international protection.

1. Functioning: Persons arriving by sea at Spanish territory, mainly in the Canary Islands, are transferred, when disembarked at Spanish coasts, to centres for temporary attention of foreigners (so-called CATEs, *Centros de atención temporal a extranjeros*) where they are detained. Detention takes place in degrading conditions and may exceed the maximum legal time limit.

The CATEs are a kind of extension of National Police stations to which they are attached. As a consequence, the stay of people apprehended when disembarking in Spanish territory in these centres is subject to a 72-hour detention limit, in accordance with Spanish legislation setting a limit of 72 hours for police detention¹⁰⁸, which in practice appears to be surpassed. Once the time limit has elapsed, either an application is submitted to the competent judicial authority for the person's detention in a migrant detention centre, or the individual is referred to the humanitarian assistance programme¹⁰⁹.

2. Time: The inadequate conditions of detention of persons arriving by sea at Spanish territory have been denounced for several years, at least since 2017¹¹⁰.

3. Place: The Spanish Administration set CATEs in Andalucía and the Canary Islands; more particularly, in Almería and Granada (2017), Cádiz (2018), Málaga (2019), 2 in Gran Canaria (2020) Lanzarote and Fuerteventura (2021), Murcia (2022)¹¹¹, El Hierro (2023) and soon in Tenerife. Other locations such as police warehouses and hotels have been used for these purposes.

4. Actors: The Spanish *Guardia Civil* is in charge of surveillance and custody of coasts and ports, the National Police is competent on the control of entry and exit into Spanish territory, as well as the application of the legislation on aliens, migration and asylum. In managing and hosting arrivals by sea, the Red Cross and Frontex usually participate too.

¹⁰⁶ Amnesty International, “España: la privación de libertad, el oscuro método de gestión migratoria”, 20 November 2024, available [here](#).

¹⁰⁷ See, for instance, Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report on Spain, CPT/Inf (2015) 19, <https://rm.coe.int/168069d58c>

¹⁰⁸ Art. 17.2 of the Spanish Constitution. This limit is also set in the Spanish Criminal Procedure Act and it can be inferred from the Regulation on Aliens too.

¹⁰⁹ Art. 58.6 of the Spanish Aliens Act establishes that, when a *devolución* cannot be executed within 72 hours, a request shall be made to the judicial authority in order to authorise an internment measure as in expulsion procedures.

¹¹⁰ See, for instance, Spanish Ombudsman, Informe anual 2017 - Mecanismo nacional de prevención, Supervisión de lugares de privación de libertad en España, de acuerdo con el Protocolo facultativo a la Convención de las Naciones Unidas contra la tortura y otros tratos o penas crueles, inhumanos o degradantes (OPCAT), 2018, available at https://www.defensordelpueblo.es/wp-content/uploads/2018/07/Informe_2017_MNP.pdf

¹¹¹ Ministry of the Interior, General Direction of the National Police, Response to information request on CATE-CIE, dossier no 00001-00077606, 14 June 2023, available at https://www.interior.gob.es/opencms/documentacion/Portal-de-Transparencia/ResolucionesDenegatorias_2023/001-077606.pdf. See also Iridia, “Vulneraciones de derechos en la respuesta institucional a las llegadas de personas migrantes en Canarias (abril-mayo 2022)”, May 2022, available at https://iridia.cat/wp-content/uploads/2022/05/informe_vulneracion_derechos_canarias_abril_mayo_22-1.pdf

5. *Interaction:* The Iridia report, supported by 17 organisations, refers to serious violations of fundamental rights during detention in those centres, such as exceeding the 72 hours' time limit of police detention¹¹², difficulties in accessing legal counsel or information (legal counsel is usually provided in a collective manner instead of individually), limited assistance by interpreters, and the lack of regulation of these centres (see "source" *infra*)¹¹³. Also, several reports by the Spanish Ombudsman highlight the poor facilities, overcrowding, lack of hygiene and lack of privacy, leading to recommendations on the closure of these facilities¹¹⁴.

These material conditions, and particularly difficulties regarding access to interpreters and legal counsel, may impact on the actual possibilities of requesting international protection. CEAR is nonetheless present in these centres in order to assist and – collectively- inform on international protection.

6. *Development:* As the number of migrants arriving by sea on Spanish territory dramatically increased in 2018 and the existing facilities used for their reception became overloaded and inapt for this purpose¹¹⁵, the Government decided to transform ample facilities located in port surroundings into centres for the temporary attention of foreigners arrived or rescued at sea¹¹⁶. These centres were initially called centres of first assistance and detention and were formed of tents. Later they evolved to occupy existing facilities in ports and were formally qualified as centres for the temporary attention to foreigners (CATEs). At the European level, they could be assimilated to the Greek and Italian "hotspots"¹¹⁷.

The numbers of people detained in CATEs are as follows (available data until 2022): 6473 (2019); 2153 (2020); 1841 (2021); 2280 (2022)¹¹⁸.

7. *Rationale:* The creation of CATEs responds to the objective of speeding up the identification and processing of disembarked migrants, avoiding the bureaucratic burden that detention in CIEs implies and the overloading of these centres¹¹⁹.

8. *Legal Status:* According to Spanish legislation on aliens, these persons are qualified as irregular migrants, or asylum seekers if they submit an application for international protection.

According to the Spanish Supreme Court¹²⁰, persons detained in CATEs are deprived of their liberty and these centres are considered to be police facilities in nature. Consequently, persons held involuntarily in these centres will be entitled to the rights granted under Spanish law to foreigners who are deprived of their liberty in police facilities; in particular, those set forth in Article 23 of Royal Decree 557/2011, of April 20. The Supreme Court held that, if migrant detention centres cannot have a punitive or disciplinary purpose, this is all the more true of detention in a CATE, whose primary purpose, in addition to transferring foreign nationals to the appropriate facility according to their legal situation, is to provide humanitarian assistance.

¹¹² See also El Diario.es, "El Defensor del Pueblo denuncia que los migrantes superan "con creces" el límite legal de 72 horas en el campamento policial de Barranco Seco", 23 January 2021, https://www.eldiario.es/canariasahora/migraciones/defensor-pueblo-denuncia-migrantes-son-retenidos-72-horas-campamento-policial_1_7082436.html

¹¹³ See, in particular, Spanish Ombudsman, "La migración en Canarias", estudio, 2021, available https://www.defensordelpueblo.es/wp-content/uploads/2021/03/INFORME_Canarias.pdf

¹¹⁴ For references, see Iridia, "Vulneraciones de derechos en la respuesta institucional a las llegadas de personas migrantes en Canarias (abril-mayo 2022)".

¹¹⁵ Before the creation of CATEs, migrants rescued at sea or arrived at the coast were sent to CIEs (*Centros de Internamiento de Extranjeros*); detention in these centres require confirmation on the existence of available places and judicial authorization. CIEs are aimed at the internment of migrants for longer periods up to 60 days in preparation of their return or expulsion from the Spanish territory.

¹¹⁶ Barbero, I., "Los centros de atención temporal de extranjeros como nuevo modelo de control migratorio: situación actual, (des)regulación jurídica y mecanismos de control de derechos y garantías", *Derechos y Libertades*, n° 45, junio 2021, pp. 267-302.

¹¹⁷ Barbero, p. 272.

¹¹⁸ Ministry of the Interior, General Direction of the National Police, Response to information request on CATE-CIE, dossier no 00001-00077606, 14 June 2023.

¹¹⁹ Barbero, 301.

¹²⁰ Supreme Court, judgment of 27 November 2024, 1889/2024, ECLI:ES:TS:2024:5869.

As people detained in CATEs have been rescued at sea or disembarked in an attempt to irregularly enter Spanish territory, authorities apply the legal institution of *devolución*¹²¹, as confirmed also by the Supreme Court.

9. *Specific Impact:* This barrier also affects minors and other vulnerable persons. As regards minors, child protection organisations have denounced shortcomings in their identification upon arrival by sea, as well as the lack of staff specialised in working with children. Allegations of ill-treatment and abuse of minors in these centres have also been reported¹²².

It should be noted that, according to the Spanish Aliens Act (Article 62.4), minors may not be detained in migrant detention centres (CIEs), except where they remain with their detained parents in order to preserve family unity, provided that the Public Prosecutor issues a favourable opinion and the centre has family units ensuring family unity and privacy (Article 62bis(1)(i)). Unaccompanied minors must be placed under the care of the competent public child protection authorities.

Some voices also argue that the majority of individuals detained in CATEs are of sub-Saharan origin, while migrants from the Maghreb, mainly Morocco and Algeria, are rarely detained in CATEs but rather directly transferred to CIEs for subsequent return or expulsion. This is explained because the latter are more likely to be expelled to their countries of origin, thus increasing the efficiency of CIEs, the same reason why Sub-Saharan migrants are left in CATEs and later transferred to other centres or released¹²³.

10. *Reach:* There are not reliable data on the reach of this barrier, but numbers of arrivals of migrants by sea are provided by the Ministry of Interior: 61.323 total arrivals by sea in 2024 (46.843 to the Canary Islands¹²⁴); 55.618 in 2023 (39.910 to the Canary Islands); 28.930 in 2022 (15.682 to the Canary Islands)¹²⁵.

11. *Source:* Art. 264 of former Spanish regulation on aliens (Royal Decree 557/2011) provides that the Ministry of Labor and Immigration will have a public network of migration centres, which will provide information, care, reception, social intervention, training, detection of human trafficking situations, and, where appropriate, referral, aimed at the foreign population. New migration centres can be approved and set, in accordance with the provisions of the Regulation. The Ministry of the Presidency will approve the statutes and internal operating rules of migration centres. Art. 263 et seq. of Royal Decree 1155/2024, of 19 November, approving the new regulation on aliens, provides very similar rules to this effect¹²⁶.

Barbero, by pointing at an agreement of the Spanish Council of Ministers of 1st February 2019, which refers to the integral assistance provided to disembarked irregular migrants through CATEs, finds it against the principle of legality. The Supreme Court in its 2024 judgment called the legislator and administration's attention on the lack of normative regulation of these centres, as a subject of great social relevance in light of its implications for safeguarding fundamental rights of migrants.

12. *Justification:* These centres for temporary attention were created by the Government in response to the massive arrivals of migrants to Spanish coast qualified as a situation of humanitarian emergency and the overcrowding of police offices traditionally used for that purpose. CATEs were set in order to host

¹²¹ Regulated in art. 58.3.a) of the Spanish Aliens Act.

¹²² Save the Children, "Las organizaciones de infancia alertan a las autoridades de los riesgos para los niños y niñas migrantes en Canarias", 6 November 2023, <https://www.savethechildren.es/notasprensa/las-organizaciones-de-infancia-alertan-las-autoridades-de-los-riesgos-para-los-ninos-y>

¹²³ Boza Martínez, D., Pérez Medina, D., "New Migrant Detention Strategies in Spain: Short-term Assistance Centres and Internment Centres for Foreign Nationals", *Paix et Sécurité Internationales*, n° 7, 2019, pp. 261-277.

¹²⁴ The rest of arrivals by sea of the total amount correspond to arrivals to mainland, the Balearic Islands, as well as to Ceuta and Melilla by sea.

¹²⁵ Spanish Ministry of the Interior, *Balances e Informes, Inmigración irregular*, available at <https://www.interior.gob.es/opencms/es/prensa/balances-e-informes/>

¹²⁶ *Real Decreto 1155/2024, de 19 de noviembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*, BOE no. 280, 20 November 2024/Royal Decree 1155/2024, which approves the Regulation of Organic Law 4/2000, on Aliens (hereinafter, Spanish Immigration Regulation). This Regulation entered into force on 20 May 2025, 6 months after its official publication.

migrants, directly after their arrival by sea on Spanish territory, in a safe place, where they will receive food, first aid assistance and medical attention, while they are identified and the first administrative formalities are undertaken¹²⁷. Migrants may then be transferred to other places and facilities (to CIEs, to the attention of NGOs...) according to their respective circumstances.

13. Domestic and International Reactions: Several complaints filed by the Spanish Ombudsman in 2021 asked the Government to respect fundamental rights of persons detained in CATEs and improve their living conditions (ensure freedom of movement within the centres; enable areas for families with children, separated from other adults; impede police officers from carrying weapons within the centres; ensure the presence of female agents; ensure proper language training to agents and staff working at the centre; provide for complaints forms on ill-treatment, among others)¹²⁸.

Externalization of asylum processing

Although Spanish law embraces the concepts of *safe third country* (STC) and *safe country of origin* (SCO) and their effects within the asylum procedure¹²⁹, available evidence does not support their characterisation as a structural barrier to access to asylum in Spain. Spain has not developed a systematic practice of externalising asylum processing through third-country arrangements, nor does it maintain a national list of safe countries. While Spain actively applies readmission agreements with certain third countries, there is no clear or systematic correlation between their implementation and the use of STC or SCO notions in asylum decision-making. As documented by AIDA¹³⁰, the application of these concepts remains limited and case-specific, rather than framed as a routine mechanism to channel applicants towards readmission countries on the assumption that effective asylum will be available there.

The relatively limited administrative use of the STC and SCO concepts has nonetheless given rise to a modest but significant body of case-law before the National High Court. While some early judgments adopted a rather formalistic approach¹³¹, particularly regarding the SCO concept, subsequent decisions have subjected the application of the STC concept to closer judicial scrutiny, requiring compliance with the safeguards established by EU law and ECJ case-law, including the existence of a meaningful connection between the applicant and the third country¹³². Overall, the case-law reflects a timid but increasingly rights-oriented interpretation of both concepts, despite the absence of comprehensive national regulation.

Procedural barriers

In Spain, procedural barriers to access asylum extend beyond the formal impossibility or difficulties in lodging an application for international protection, which is examined below, and include a range of shortcomings that undermine the effectiveness of the procedure as a whole. Spanish case-law has identified as procedurally relevant barriers the lack of effective access to interpretation and legal assistance; restrictive interpretations concerning the competent authority or place where an asylum application may be submitted; rigid or incorrect calculation of time limits in the accelerated border procedure; or uncertainties regarding the suspensive effects of an asylum application on removal proceedings, and the right to remain

¹²⁷ See Resolution of the Spanish State Secretary of Security of 23 July 2018 (Resolución de la Secretaría del Estado de Seguridad de 23 de julio de 2018, por la que se declara de emergencia la tramitación de expedientes de contratación para atender la llegada inesperada y masiva de embarcaciones con inmigrantes), available at http://www.migrarconderechos.es/legislationMastertable/legislacion/RSES_23_07_2018_emergencia_contratacion

¹²⁸ Defensor del Pueblo, “Visita al Centro de Atención Temporal a Extranjeros de Málaga (CATE)” (suggestions after visit to CATE in Málaga), 17 February 2021, available at <https://www.defensordelpueblo.es/resoluciones/centro-de-atencion-temporal-a-extranjeros-de-malaga-cate/>

¹²⁹ Art. 20.1.d) (inadmissibility on the basis of the safe third country notion) and art. 25.1.d) of the Spanish Asylum Act (urgent processing on the basis of the safe country of origin notion).

¹³⁰ AIDA/ECRE Country Report Spain, 2024-Update 2025, section on “safe third country”.

¹³¹ National High Court, judgment of 17 October 2016, appeal no. 165/2016, ECLI:ES:AN:2016:3838, and judgment of 31 October 2016, appeal no. 692/2015, ECLI:ES:AN:2016:4076.

¹³² National High Court, judgement of 17 November 2016, appeal no. 721/2015, ECLI: ES:AN:2016:439; judgement of 16 January 2017, appeal no. 163/2016, ECLI: ES:AN:2017:1523; judgement of 2 February 2018, appeal no. 397/2017, ECLI:ES:AN:2018:428; judgement of 4 February 2022, appeal no. 2328/2019, ECLI: ES:AN:2022:437.

in the territory while judicial appeals against asylum decisions are pending. Spanish courts have treated these deficiencies as elements capable of depriving the asylum procedure of its substance and of rendering access to international protection ineffective in practice, as shown in the list of Spanish case-law provided under this project. Given their respective specificities, all these procedural barriers cannot be examined in detail within the structure of Part 1, although they are certainly addressed in Part 2 and 3 of this National Report.

Procedural barriers - Difficulties in registration of asylum applications

Summary: Persistent shortages of appointments and excessive delays during the initial stages of the asylum procedure constitute a significant barrier to access to international protection in Spain. Since the sharp increase in applications from 2017–2018, and despite the introduction of an online appointment system, structural shortcomings, limited capacity and irregular practices have made timely registration difficult or impossible in many provinces. These delays prevent applicants from accessing reception conditions, work authorisation and documentation attesting to their status, exposing them to the risk of expulsion and undermining effective access to the asylum procedure.

1. Functioning: Access to the asylum procedure is hindered by persistent shortages of appointments and excessive delays during its initial stages, particularly in obtaining, first, an appointment to express the intention to apply for international protection and, second, an appointment to formally lodge the application.

2. Time: The problems with the appointments system first emerged in 2017-2018 as a consequence of the increase in the number of applications lodged in Spain. They were further exacerbated during the COVID-19 pandemic and persist at present.

3. Place: Within Spanish territory.

4. Actors: Appointments relating to the initial stages of the asylum procedure, including the expression of the intention to apply for international protection, the formal lodging of the application and the initial interview, are managed by the National Police. The Spanish Office of Asylum and Refuge (OAR), within the Ministry of the Interior, is responsible for processing applications for international protection in accordance with the Spanish Asylum Act 12/2009¹³³.

5. Interaction: Delays in obtaining appointments to register and formalize an asylum application hamper applicants' access to reception conditions in Spain, which must be available to all asylum seekers under EU legislation on reception conditions for applicants for international protection (Directive 2013/33 now replaced by Directive 2024/1346). This also postpone the obtention of authorisation to work and the applicant's integration process. During this time, people lack documentation proving they are potential asylum seekers, exposing them to the risk of being subjected to expulsion procedures, contrary to the principle of *non-refoulement*.

6. Development: The multiplication of international protection applications in Spain since 2017-2018 has deeply affected its asylum system, as no major structural changes had been introduced to adapt to that increase. In 2021, an electronic system to request an appointment to express the intention to apply for international protection and subsequently to lodge the asylum application was put into place. Although waiting times decreased, the online system was affected with technical problems and the limited number of available places. The administration decided to increase personnel, but no significant changes were observed.

In addition to an increase in applications and the shortage of human resources, it was reported that criminal networks managed to electronically block online asylum appointments in order to sell them later on the black market. This made it practically impossible for individuals wishing to apply for asylum to access an online appointment unless they purchase it through these channels (prices ranging from 300€ to 600€).

¹³³ Art. 23.1 of the Spanish Asylum Act.

As a consequence, many persons move to other provinces in order to obtain an appointment more easily, but police stations started to refuse them access as they could not prove their residence in that province (by asking proof of residence, which is contrary to the Instruction from the State Secretary for Security and the Subsecretary of the Interior on the formalization of applications for international protection).

As a reaction to the irregular market for online appointments, the National Police decided to gradually replace them with other appointment methods (by phone, e-mail or in person) at the discretion of each province. However, access to the international protection procedure has not improved, with significant disparity between provinces. The waiting time to obtain an appointment to express the intention to apply for asylum in 2023 ranged, across provinces, from a few days and 10 months, while the waiting time to obtain an appointment for the registration of the asylum application (after obtaining the appointment for the expression of intention referred to before) ranged from 15 days to more than one year¹³⁴.

7. *Rationale:* This barrier results from the collapse of the initial phase of the asylum procedure due to a persistent increase in the number of asylum seekers arriving to Spain, the shortage of sufficient personnel responsible for registration and lodging of applications for international protection, technical problems, together with the exploitation of the system by criminal networks.

8. *Legal Status:* Individuals who are unable to present their asylum request are not formally considered asylum seekers, but migrants in an irregular situation who lack access to reception conditions and risk being subjected to expulsion procedures from the territory and, consequently, to refoulement to their countries of origin.

9. *Specific Impact:* This barrier has a specific impact on families who are not attended together when they go to police stations to request international protection (only one adult and the minors are attended to, while the rest of the family must request new individual appointments). This practice hampers family unity and prevents the whole family from accessing reception conditions¹³⁵.

In addition, refugees without financial resources, who are usually the most vulnerable, cannot access the international protection procedure if their only option is to buy an online appointment in the black market. Also, the system of online appointment itself particularly affects older people without digital skills.

10. *Reach:* The exponential increase in asylum applications lodged in Spain can be perceived in the following data: 16.544 applications in 2016; 31.740 in 2017; 55.749 in 2018; 118.446 in 2019 (after a reduction in 2020-2021, 119.240 applications were presented in 2022, 163.642 in 2023 and 167.749 in 2024)¹³⁶.

11. *Source:* These delays are contrary to art. 6 of Directive (EU) 2013/32, establishing a deadline of 3 working days (to be extended to 6) to register the application and to lodge it as soon as possible. Agents from the Interior Ministry received Instructions from the Security Secretary of State and the Interior Subsecretary on the lodging of applications for international protection¹³⁷, which indicate that a request for international protection has been made once the person express her will to ask for protection before a public agent and that access to this procedure cannot be conditioned to the presentation of any documentation.

This practice would also be contrary to Directive EU/2013/33 which ensures minimal reception conditions since the moment a person requests international protection, and to the EU Charter of Fundamental Rights (art. 18 and 41).

¹³⁴ Data from Accem, February 2024, and AIDA/ECRE Country Report Spain, 2024-Update 2025.

¹³⁵ El País, "Las quejas por el sistema de asilo desbordan el buzón del Defensor del Pueblo: 'Las situaciones se perpetúan'", 4 May 2024, available at <https://elpais.com/espana/2024-05-04/las-quejas-por-el-sistema-de-asilo-desbordan-el-buzon-del-defensor-del-pueblo-las-situaciones-se-perpetuan.html>

¹³⁶ Spanish Ministry of the Interior, "Asilo en cifras 2023" and "Asilo en Cifras 2024", available at <https://www.interior.gob.es/opencms/ca/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones/publicaciones-descargables/publicaciones-periodicas-anuarios-y-revistas/asilo-en-cifras/>

¹³⁷ Instrucción de la Secretaría de Estado de Seguridad y de la Subsecretaría de Interior para la formalización de solicitudes de protección internacional, available at <https://acogidayasilo.blog/wp-content/uploads/2022/01/instruccion-ses-30-04-2021-pi-entrevista-de-asilo.pdf>

12. *Domestic and International Reactions:* Claims and calls have been expressed by UNHCR¹³⁸; the General Council of Spanish Lawyers¹³⁹; or the Spanish Ombudsman¹⁴⁰.

In June 2023, CEAR and other organisations filed a claim before the European Commission regarding the infringement by Spain of EU law by delaying access to the asylum procedure and the exercise of the right to asylum¹⁴¹. In 2024, the High Court of Justice of Aragón upheld an appeal against administrative inaction resulting in an excessive delay in scheduling the applicant's personal appearance to register an asylum application (six months in the case at hand). The Court held that this delay effectively prevented access to the asylum procedure for a prolonged period and went beyond a mere formal irregularity, casting doubt on the effectiveness of the protection to be afforded by the State¹⁴².

B. Barriers of specific relevance to jurisdiction

Asylum requests at Spanish diplomatic missions

Summary: Spanish law provides for the possibility of requesting a transfer to Spanish territory from embassies or consulates in order to lodge an asylum application. This mechanism is not, however, effectively implemented in practice. The lack of regulatory development, the very limited use of this provision by diplomatic missions and the limited functioning of alternative legal pathways significantly hinder access to asylum, pushing individuals in need of protection towards irregular and more dangerous routes.

1. *Functioning:* Art. 38 of the Spanish Asylum Act, Law 12/2009 on Asylum and Subsidiary Protection, which provides the transfer, from Spanish embassies and consulates, of applicants for international protection into Spanish territory so that they can submit there their application, is not being enforced in practice. This legal provision has not been accompanied by the necessary normative development ensuring its execution, as requested by the Spanish Asylum Act. In spite of the judicial recognition of its applicability, art. 38 enjoys a limited application.

2. *Time:* It was Spanish Law 5/1984 on the Right to Asylum and the Condition of Refugees that introduced the right to submit an application for asylum before Spanish embassies or consulates, application which should be processed by the Ministry of Foreign Affairs. Law 12/2009 changed the legal nature of this entitlement, providing only for the possibility for the applicant to request, from the diplomatic or consular mission, a transfer to Spanish territory with the aim of presenting an application for international protection there. Consequently, under Law 12/2009, Spanish diplomats are only entitled to authorise the transfer.

3. *Place:* The barrier refers to a situation which takes place outside Spanish territory. The transfer provided for in art. 38 of the Spanish Asylum Act departs from a Spanish diplomatic or consular mission in a third country (different, of course, from the country of origin of the refugee requesting to be moved into Spain).

¹³⁸ AIDA/ECRE Country Report Spain, 2024-Update 2025.

¹³⁹ General Council of Spanish Lawyers, "La Abogacía denuncia la vulneración del derecho de asilo ante la imposibilidad de obtener una cita por internet", 26 March 2024, <https://www.abogacia.es/actualidad/noticias/la-abogacia-denuncia-la-vulneracion-del-derecho-de-asilo-ante-la-imposibilidad-de-obtener-una-cita-por-internet>

¹⁴⁰ Spanish Ombudsman, "Tramitación de los procedimientos de protección internacional", complaint no. 21014901, available at <https://www.defensordelpueblo.es/resoluciones/tramitacion-de-los-procedimientos-de-proteccion-internacional/>; La Vanguardia, "El Defensor urge a Interior a actuar ante el colapso en el sistema de citas de asilo", 21 March 2024, <https://www.lavanguardia.com/politica/20240321/9577609/defensor-urge-interior-actuar-colapso-sistema-citas-asilo-agenciaslv20240321.html>

¹⁴¹ CEAR, "Organizaciones sociales presentan una queja a la Comisión Europea ante las graves deficiencias para acceder al procedimiento de asilo", <https://www.cear.es/noticias/queja-comision-europea-por-deficiencias-para-acceder-al-procedimiento-de-asilo/>

¹⁴² Superior Court of Justice of Aragón, judgment 202/2024, 23 May 2024, appeal no. 477/2023.

4. *Actors:* As clarified by the Supreme Court in 2020¹⁴³, the Law does not authorize either the Ambassador or the Consul to process any asylum application. The Ambassador may confirm the applicant's actual nationality and verify whether her physical safety is at risk for reasons related to the scope of the law (asylum or subsidiary protection). The Ambassadors - not the Consuls - are the competent bodies to decide on the transfer to Spain of individuals willing to apply for international protection. Once a favourable resolution has been adopted by the Spanish embassy, the Ministry of Foreign Affairs will adopt a laissez-passer to make the travel to Spain possible.

5. *Interaction:* The absence of normative development of art. 38 of Law 12/2009, the limited application of this provision by diplomatic missions, together with the non-functioning of other legal pathways to international protection, clearly hamper access to asylum and may lead refugees to resort to irregular and more dangerous pathways to protection.

6. *Development:* The Spanish Asylum Act, Law 12/2009, introduced a new provision on applications for international protection at embassies and consulates, article 38. In accordance to this provision, when the applicant is not a national of the country where the diplomatic mission is located and her personal integrity is at risk, Spanish ambassadors may request the transfer of the asylum applicant to Spanish territory in order to facilitate the submission of the application in accordance with the procedure provided for in this Law. The obligation to develop, in the regulation executing Law 12/2009, the conditions of access to the diplomatic and consular missions, and the procedure to evaluate the transfer needs has not been fulfilled yet. However, according to Spanish case-law, this is not an obstacle for the applicability of art. 38 of Law 12/2009. In particular, the Spanish Supreme Court has clarified, in a judgment of 15 October 2020¹⁴⁴, that the legal mandate contained in art. 38 of Law 12/2009 is not conditioned in its effectiveness to its normative development through a regulation, since the existing regulation on the previous Spanish Asylum Act (Royal Decree 203/1995 in development of Law 5/1984) has not been repealed for these purposes as long as a new regulation is not adopted. The Supreme Court thus refers to art. 16 of Royal Decree 203/1995 on the presentation of asylum applications in diplomatic missions and consular offices, which allowed the authorization of the transfer to Spain for the instruction of the procedure. Reference is also made to Article 8 of Royal Decree 116/2013, regulating the issuance of provisional passports and laissez-passers and providing that diplomatic and consular missions may issue laissez-passers to promote the transfer of applicants for international protection to Spain in order to enable the submission of their applications in accordance with art. 38 of the Asylum Law. The Circular Letter to the Spanish ambassadors of 20 November 2009 also contains the instructions to follow for the application of art. 38 of the Asylum Law until a regulation for its development is issued. Moreover, the Supreme Court mentions in its judgment the position maintained by the Spanish Government, before the ECtHR in the *ND and NT v Spain*, by which the State rejected the non-application of art. 38 of the Asylum Law as an alternative legal pathway to the irregular crossing of the border. In this case, the Strasbourg Court declared that, as the Government had demonstrated, the procedure of art. 38 could be applied through the provisions of Royal Decree 203/1995, requiring the processing of the file within a maximum period of 6 months and subject to appeal. The Supreme Court concluded that, on the basis of all these elements, the lack of regulatory development of art. 38 of the Asylum Law does not prevent its application; that the assessment of the danger to the physical integrity of the applicant must be understood as referring to the situation of the applicant in the country of origin (not in the country where the Spanish diplomatic representation is located); and that the lack of a resolution by the Administration constitutes a presumed act susceptible to challenge.

In another judgment rendered by the Supreme Court in 2024¹⁴⁵ (STS 199/2024), the possibility to allow for the transfer to Spain as a precautionary measure was recognised when a laissez-passer allowing departure from the third country had been previously granted to the individual who invoked art. 38.

¹⁴³ Supreme Court, judgment of 15 October 2020, appeal no. 4989/2019, ECLI:ES:TS:2020:3445.

¹⁴⁴ *Ibid.*

¹⁴⁵ Supreme Court, judgment of 6 February 2024, appeal no. 2628/2023, ES:TS:2024:680.

In recent years, it has been reported that art. 38 of Law 12/2009 is being applied to Afghan nationals who manage to flee to neighbouring countries such as Pakistan or Iran, where Spanish embassies are starting the procedure of transfer¹⁴⁶. Difficulties to access diplomatic representations, procedural delays and the limitation of this legal pathway almost exclusively to Afghan nationals persist¹⁴⁷.

In addition to the transfer of Afghan nationals, access to the asylum procedure from Spanish diplomatic missions abroad seems, in practice, to be limited to processing applications for family extension, by which family members of an applicant for international protection who is already in Spanish territory ask for their reunification with the main applicant¹⁴⁸. Current data provided by the Spanish Ministry of Interior on the number of applications submitted in Spanish diplomatic or consular missions exclusively refers to applications for family extension¹⁴⁹.

On 22 March 2024, the political group SUMAR presented, at the Spanish Congress, a legislative proposal aimed at amending art. 38 of Law 12/2009 by reintroducing a right to apply for asylum at Spanish embassies and consulates, as well as regulating certain conditions of access to those missions and certain aspects of the procedure¹⁵⁰.

7. *Rationale*: The Administration has justified the limited practical application of art. 38 of Law 12/2009 on the lack of normative development of this provision.

8. *Legal Status*: The individuals who fall under art. 38 of Spanish Asylum Act are not qualified as asylum applicants, since they would only access to this status once they are transferred into Spanish territory and register their asylum application before the Spanish authorities. The Spanish ambassador, competent to decide on the application of art. 38, is only entitled to decide on the physical transfer from the third country where the diplomatic mission is located to Spanish territory.

9. *Reach*: As explained in “Development” *supra*, the number of applications for international protection presented at Spanish diplomatic or consular missions amounted to 1.087 applications in 2023, over a total of 163.642 applications. However, 100% correspond to family extensions, since the numbers provided by the Spanish Ministry of Interior exclusively account for the specific application of family extension under the category of applications presented at embassies and consulates¹⁵¹. In 2024, 2.044 applications were submitted from embassies and consulates, over a total of 167.749 applications (the same caveat on family extensions applies here)¹⁵².

10. *Source*: Article 38 of Spanish Law 12/2009 on Asylum and Subsidiary Protection. More than 15 years later, the normative development of this provision (and of the law in general) has not been undertaken by

¹⁴⁶ Europa Press, “El Gobierno ha facilitado la llegada a España de 1.444 afganos que huían de los talibán desde Irán y Pakistán”, 6 March 2023, <https://www.europapress.es/nacional/noticia-gobierno-facilitado-llegada-espana-1444-afganos-huian-taliban-iran-pakistan-20230306161146.html>

¹⁴⁷ CEAR, *Informe 2022: Las personas refugiadas en España y Europa*, <https://www.cear.es/informe-cear-2022/> and *Informe 2023: Las personas refugiadas en España y Europa*, <https://www.cear.es/informe-cear-2023/>

¹⁴⁸ Fernández Burgueño, B., “Solicitudes de asilo patrocinadas presentadas en embajadas y consulados. Un modelo basado en la experiencia española y en el programa canadiense de «private sponsorship»”, *Revista electrónica de estudios internacionales*, n° 35, 2018.

¹⁴⁹ See numbers of applications by place of presentation, the categories being national territory, border post, centre of detention of aliens, and “extensiones familiares presentadas en embajadas y consulados” (family extensions submitted in embassies and consulates): Spanish Ministry of the Interior, *Asilo en Cifras 2023*, available at <https://www.interior.gob.es/opencms/ca/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones/publicaciones-descargables/publicaciones-periodicas-anuarios-y-revistas/asilo-en-cifras/>

¹⁵⁰ BOCG. Congreso de los Diputados Núm. B-83-1 22 March 2024, https://www.congreso.es/public_oficiales/L15/CONG/BOCG/B/BOCG-15-B-83-1.PDF. The proposal is, since then, pending consideration by the plenary of the Spanish Congress.

¹⁵¹ Spanish Ministry of the Interior, *Asilo en cifras 2023*, available at <https://www.interior.gob.es/opencms/ca/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones/publicaciones-descargables/publicaciones-periodicas-anuarios-y-revistas/asilo-en-cifras/>

¹⁵² Spanish Ministry of the Interior, *Asilo en Cifras*, 2024.

the Spanish Government, reason why the previous regulation adopted to implement the former Spanish Law 5/1984 on asylum still applies.

11. Domestic and International Reactions: Already in 2016, the Spanish Ombudsman asked the Spanish Government to modify Law 12/2009 in order to include the possibility to lodge applications for international protection in diplomatic missions abroad, and, if that would not be possible, to urgently introduce a humanitarian visa which facilitates access of the would-be applicant to Spanish territory to request asylum¹⁵³.

Airport Transit Visas

Summary: Spain introduces airport transit visa requirements for nationals of certain countries associated with high numbers of asylum applications, restricting their ability to reach Spanish territory. While formally allowing transit within the international zone of airports, these visas are difficult and costly to obtain, and their processing is lengthy, thereby limiting access to asylum for those lacking alternative safe pathways. This measure is explicitly linked by the Government to preventing alleged abuse of the asylum system and to reducing overcrowding in airport inadmissibility rooms, but in practice it hampers access to international protection and may push individuals towards irregular and more dangerous routes.

1. Functioning: The Spanish Government decided to require airport transit visas to persons holding passports from countries producing high numbers of asylum seekers in Spain or from neighbouring countries to whose documentation asylum seekers may have access (eg. Kenian passports for Somalian asylum seekers, or Chadian passports from Sudanese asylum seekers). These visas allow transit within the international area of Schengen airports, but do not permit entry into the territory.

2. Time: This practice is recurrent in Spain each time a rise in asylum applications from a given country is particularly perceived, as explained in “Development” *infra*. It was first introduced in 2011 for persons coming from Syria and this practice continues to take place at present.

3. Place: The effects of this practice are mainly felt at the Madrid-Barajas airport, where people attempt to request asylum at the international area of the airport.

4. Actors: Spanish Administration, particularly the Ministry of Interior and the Ministry of Foreign Affairs.

5. Interaction: Airport transit visas complicate access to international protection in Spain for those who cannot access through other safe channels. Applications for airport transit visas in Spanish consular or diplomatic missions abroad take long time to be processed and are subject to the payment of fees. The difficulties in obtaining these visas may lead persons in need of international protection to resort to deadly migration routes. This barrier is connected with detention at the “asylum rooms” of airports, since the Spanish government resorts to airport transit visas as a means to reduce the number of people crowded in those areas.

CEAR has denounced that Spain had asked Morocco to prevent people from Senegal boarding flights directed to Spain unless they hold a Schengen visa issued two years in advance, as a temporary measure until the transit visa requirement to Senegalese passport holders came into effect in February 2024¹⁵⁴.

6. Development: When there is an increase in asylum applications from a certain nationality at the airport, Spanish authorities usually resort to imposing the requirement of these types of visas. According to CEAR, the Spanish Government required airport transit visas persons from Syria in 2011, Palestine in 2019,

¹⁵³ Defensor del Pueblo, “Incorporación al ordenamiento jurídico de las directivas sobre asilo pendientes y elaboración urgente del reglamento de la Ley de Asilo”, Recommendation 16008388, <https://www.defensordelpueblo.es/resoluciones/incorporar-al-ordenamiento-juridico-las-directivas-sobre-asilo-pendientes-total-o-parcialmente-de-transposicion-y-elaborar-con-caracter-urgente-el-reglamento-de-la-vigente-ley-de-asilo/>

¹⁵⁴ CEAR, “Los visados de tránsito incrementan los riesgos en las rutas migratorias”, 5 February 2024, <https://www.cear.es/noticias/visados-transito-riesgos-rutas-migratorias/>

Yemen in 2020, Haiti in 2021, Turkey in 2022, Burkina Faso in 2023, and more recently Kenya and Senegal at the beginning of 2024¹⁵⁵; and Sudan and Chad in June 2024¹⁵⁶.

7. *Rationale:* As the requirement of airport transit visas to a given third country is clearly connected to a rise in asylum applications filed, at the international airport area, by persons holding passports from the same country, the rationale of the measure relates to an attempt to curb the number of asylum applications and hamper access to asylum in Spain. The Government, more particularly its Minister of Interior, has stated that this measure aims at avoiding fraud in asylum applications¹⁵⁷. The Government also connects this measure with the need to reduce the overcrowding of the inadmissibility or asylum rooms at the Madrid-Barajas airport.

8. *Legal Status:* Persons affected by this barrier do not have a legal status in Spain. Those who do not obtain the airport transit visa would not be allowed to make a stopover in a Spanish airport and those holders of airport transit visas who manage to travel and make that stopover may request international protection at the airport, but they are not qualified as asylum seekers until their request is registered. This registration is delayed because of the collapse of the asylum rooms at the Madrid-Barajas airport, as explained in the barrier “Detention I”.

9. *Specific Impact:* The requirement of airport transit visa appears to have a specific impact on refugees with limited resources, as the fee for processing an application for an airport transit visa is 90€¹⁵⁸.

10. *Reach:* Although there are no available specific numbers of persons affected by this barrier, it is remarkable that the requirement of airport transit visas is imposed on countries with a high recognition rates of international protection, such as Somalia (98,37%), Sudan (94,48%) or Burkina Faso (93,96%), as data from 2024 evidences¹⁵⁹.

For instance, the rise in asylum applications from Senegal and Somalia during 2023 may explain the introduction of the airport transit visa requirements to holders of passports from Senegal and Kenya (since Somalians would be fleeing their country with Kenian passports) and is supported by figures: asylum applications from Senegalese persons in Spain raised from 1297 in 2022 to 2183 in 2023, while asylum applicants from Somalia raised from 54 in 2022 to 876 in 2023¹⁶⁰.

11. *Source:* The information presented above is based on the CEAR Report 2024, the CEAR press releases referred to above, and on official information published by the Spanish Ministry of Foreign Affairs¹⁶¹.

¹⁵⁵ *Ibid.*

¹⁵⁶ CEAR, "España impone el visado de tránsito a personas de Sudán, un país en conflicto", 28 June 2024, <https://www.cear.es/noticias/visado-transito-personas-sudan/#:~:text=Espa%C3%B1a%20impone%20el%20visado%20de,Sud%C3%A1n%2C%20un%20pa%C3%ADs%20en%20conflicto&text=CEAR%20alerta%20de%20que%20a,en%20vuelos%20procedentes%20desde%20Marruecos>

¹⁵⁷ El Periódico, "Interior estudia pedir visados de tránsito en vuelos de Marruecos para evitar fraudes en las peticiones de asilo", 19 January 2024, <https://www.elperiodico.com/es/politica/20240119/interior-estudia-implantar-visados-transito-evitar-fraude-peticiones-asilo-97114638>

¹⁵⁸ Orden AUC/891/2024, de 13 de agosto, por la que se establecen las cuantías de las tasas por la tramitación de visados, BOE no. 205, 24 August 2024.

¹⁵⁹ Spanish Ministry of the Interior, "Avance de datos de protección internacional, aplicación del Reglamento de Dublín y reconocimiento del estatuto de apátrida. Datos provisionales acumulados entre el 1 de enero y el 31 de diciembre de 2024", https://efaidnbmnnnibpcajpcglclefindmkaj/https://proteccion-asilo.interior.gob.es/documentos/estadisticas/ultimos-datos/Avance-Trimestral-PI_diciembre.pdf

¹⁶⁰ Spanish Ministry of the Interior, "Asilo en cifras 2022" and "Asilo en cifras 2023", available at <https://www.interior.gob.es/opencms/ca/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-publicaciones-descargables/publicaciones-periodicas-anuarios-y-revistas/asilo-en-cifras/>

¹⁶¹ "Visados de tránsito aeroportuario", available at <https://www.exteriores.gob.es/Embajadas/yaunde/es/ServiciosConsulares/Paginas/index.aspx?scca=Visados&scco=Camer%C3%BA&scd=292&scs=Visados+de+transito+aeroportuario>

The legal framework governing airport transit visas is set out in Article 29 of the Spanish immigration regulation, Royal Decree 1155/2024, which refers to the relevant provisions of EU law, particularly Regulation 810/2009 establishing the Visa Code.

12. Justification: The Ministry of the Interior has described the stopovers in Spanish airports as fraudulent, since the intention of the passengers would not be to reach their final destination, but to stay in Spain by asking asylum during the stopover on their flight¹⁶².

Art. 3.2 of Regulation (EU) 810/2009 allows individual Member States to require airport transit visas to nationals of third countries other than those listed in Annex IV of the Visa Code (harmonised list at EU level) when passing through the international transit areas of airports in the territory of Member States. However, the legal justification for this requirement refers to “urgent cases of mass influx of illegal immigrants” (art. 3.2), which cannot be equated to an increase in arrivals of asylum seekers.

13. Domestic and International Reactions: CEAR has denounced this practice as being an obstacle in accessing the right to asylum and thus the asylum procedure, and suggests the application of art. 38 of Spanish Spanish Asylum Act allowing for the transfer to Spain of asylum seekers from diplomatic and consular missions¹⁶³.

III. SELECTING BARRIERS

The barriers to access asylum under Spanish jurisdiction which are selected for further research in Part 2 of this Report are all those identified as of general relevance, that is, pushbacks; walls and fences (case-law is limited and often associated to “pushbacks”, but some judicial pronouncements directly focus on the ‘operational concept of border’); detention; and procedural barriers (mainly related to undue delays; applicable safeguards; concepts of safe third country and safe country of origin; place and formalities for submitting asylum applications; applicable procedure; suspension of expulsion pending asylum requests). Pullbacks would be however difficult to analyse because of the limited availability of associated case-law, mostly because individuals affected by these practices do not reach Spanish territory nor Spanish courts. There is however an important case, related to the ship *Marine I*, that will be analysed in this report. Among the barriers of specific relevance, only the one related to “asylum requests at Spanish diplomatic missions” will be subject to further analysis in light of available associated case-law.

¹⁶² El País, “El Gobierno pide a Marruecos que no deje embarcar a senegaleses sin visado en vuelos con escala en España”, 31 January 2024, <https://elpais.com/espana/2024-01-31/espana-pide-a-marruecos-que-no-deje-embarcar-a-senegaleses-sin-visado-para-frenar-la-llegada-de-inmigrantes-a-barajas.html>

¹⁶³ CEAR, “Los visados de tránsito incrementan los riesgos en las rutas migratorias”, 5 February 2024, <https://www.cear.es/noticias/visados-transito-riesgos-rutas-migratorias/>

PART 2: CASE LAW ANALYSIS¹⁶⁴

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Description of the barriers in the case law

Pushbacks: rejection of individuals at the Spanish border with Morocco, in Ceuta and Melilla, when trying to enter irregularly into Spanish territory through non-authorised points (at land or maritime borders). This rejection is executed by State agents without undertaking a previous identification of the individual and without processing an administrative decision and its corresponding legal safeguards, including the possibility of requesting international protection.

Type of body: first instance (Contentious-administrative Courts or Preliminary Investigation Courts); second instance (Superior Court of Justice or Provincial Court); supreme instance (Supreme Court, cassation appeal); constitutional instance (Constitutional Court, constitutionality challenge).

Pullbacks: pullbacks undertaken by Spain consist of joint maritime patrols conducted by the Spanish authorities together with the law enforcement agents of certain African countries within the latter's territorial waters. These operations are aimed at impeding the exit of potential migrants towards Spanish territory, preventing individuals from abandoning their country of origin and from seeking asylum from the Spanish authorities. Likewise, the practice whereby Moroccan authorities prevent and impede individuals from approaching or reaching the border fence at Ceuta and Melilla, thereby preventing them from accessing Spanish territory, may also be qualified as a "pullback practice" if account is taken to the fact that Moroccan actions are supported by Spanish/EU funding and border management equipment.

To our knowledge, this barrier, as specifically defined in this report, has not been addressed by Spanish courts' case-law. Access to judicial protection in Spain in case of pullbacks is confronted to several obstacles, mostly related to the fact that individuals affected by these practices do not reach Spanish territory. There is however an important case, related to the ship *Marine I* and the intervention of Spanish authorities in the high seas and in Mauritania, that could be qualified as a pullback practice. Its significance and impact justify its analysis in this report¹⁶⁵.

Type of body: first instance and supreme instance.

Walls and fences: at the Spanish-Moroccan border at the autonomous cities of Ceuta and Melilla, the Spanish authorities have erected a multi-fence barrier, composed of two outer six-meter-high fences and a three-meter-high fence located in between. The length of the fence in Melilla is of 12 km, while the one in Ceuta extends to 8,2 km. There are gates at regular intervals (to be used by border agents, but which are not serving as authorised border crossing points) and the whole fence is monitored through a CCTV system, including infrared cameras and movement sensors. The fences are located within Spanish territory and, on both sides, are under Spain's full jurisdiction. The fence system and its surveillance, in combination with pushback practices, complicate the submission of asylum applications before the Spanish authorities.

Type of body: first instance (Preliminary Investigation Courts or Contentious-administrative Central Court), second instance (Provincial Court or National High Court) and supreme instance (Supreme Court, cassation appeal).

¹⁶⁴ The author would like to express her gratitude to Luisa Aragón López (Universidad Autónoma de Madrid) and Jesús Estrada López (partner at GTA Villamagna, specialized in public law litigation) for their valuable assistance with Parts 2 and 3 of this Report.

¹⁶⁵ There is also a second case related to the legality of the provision of financial assistance to the Moroccan authorities in the deployment of their activities aimed at fighting against irregular migration, smuggling of migrants and trafficking of human beings, which cannot be qualified as a 'leading decision' but, because of its subject -matter, is included in the Spanish list of case-law under this project (Supreme Court, judgment of 23 December 2020, appeal no. 386/2019, ECLI:ES:TS:2020:4397).

Detention: This barrier affects asylum seekers in Spain in different forms. On the one hand, “asylum rooms” in certain Spanish airports, especially in Madrid-Barajas, host individuals applying for international protection at the border post within the airport facilities, in which the border accelerated procedure applies. The delays in the registration and processing of the applications lead to an informal situation of detention, since applicants cannot abandon those areas, nor access Spanish territory. On the other hand, persons arriving by sea at Spanish territory, mainly at the Canary Islands, are transferred, when disembarking at Spanish coasts, to centres for temporary attention of foreigners (so-called CATEs, *centros de atención temporal a extranjeros*) where they are detained. Detention takes place in degrading conditions and may exceed the maximum legal time limit of 72 hours. Detention also affects persons who apply for asylum while they are retained in Immigration Detention Centres (so-called CIEs, *Centros de Internamiento de Extranjeros*) in preparation of the forced execution of their orders of expulsion or *devolución*, in accordance to art. 62 of the Spanish law 4/2000 on aliens.

Type of body: first instance (Preliminary Investigation Court or National High Court); second instance (Provincial Court or supreme instance, cassation appeal)

Procedural barriers: these barriers comprehend several formal obstacles that individuals who apply for international protection face when trying to register their requests or appeal the decisions rejecting their claims. Difficulties in the registration of applications include shortage of appointments, lack of legal counsel or interpreter’s assistance, the rigidity of formal requirements, such as those concerning the place where applications must be lodged, and a wide interpretation of reasons for inadmissibility, including on the basis of ‘safe third country’ and ‘safe country of origin’ concepts.

On the other hand, obstacles in appealing these decisions mainly relate to the right to remain in Spanish territory and the paralysation of any expulsion proceedings against the applicant while the appeal is pending.

Type of body: first instance (Contentious-administrative Courts or National High Court); second instance (Superior Court of Justice or Supreme Court); supreme instance (Supreme Court, cassation appeal).

Other barriers:

Asylum requests at Spanish diplomatic missions: article 38 of the Spanish Asylum Act, 12/2009, provides for the possibility for Spanish embassies and consulates to transfer applicants for international protection to Spanish territory so that they can submit their applications there. This provision has not been accompanied by the necessary normative development ensuring its execution, as requested by Law 12/2009. In spite of the judicial recognition of its applicability, art. 38 of Spanish Law on Asylum enjoys a limited application in practice, restricted to Afghan nationals and family extension cases.

Type of body: first instance (National High Court or Superior Court of Justice); supreme instance (Supreme Court, cassation appeal).

No cases related to one or more selected barriers

The Spanish Government requires airport transit visas to persons holding passports from countries producing high numbers of asylum seekers in Spain or from neighbouring countries to whose documentation asylum seekers may have access. These visas allow transit within the international area of Schengen airports, but do not permit entry into the territory. This requirement complicates access to international protection since applications for airport transit visas in Spanish consular or diplomatic missions abroad take long time to be processed and are subject to the payment of fees. To our knowledge, this barrier has not been addressed by Spanish courts’ case-law. Since the barrier itself is connected to the requirement, for nationals of countries producing high numbers of refugees, to obtain an airport transit visa before arriving in Spain and asking for asylum at the airport, the effect is that asylum seekers from those countries have more difficulties to travel to Spain. They do not arrive or enter into Spanish territory and there is no challengeable ‘action’ by Spanish authorities.

B. Institutional settings

Pushbacks:

- **First instance judicial body:**

When pushbacks are challenged on the grounds of violations of administrative law (returns or rejections at the border executed without processing an administrative decision¹⁶⁶, breach of the Spanish Aliens Act, or the Spanish Asylum Act), jurisdiction at first instance generally lies with the *Juzgados de lo Contencioso-Administrativo*/Contentious-administrative¹⁶⁷ Courts¹⁶⁸. In such cases, the competent Court is the one whose jurisdiction covers the seat of the administrative body that issued the contested act or decision.

When pushbacks result in criminally relevant events, the first judicial body to intervene is the *Juzgado de instrucción*/Investigating Court, which decides whether there is sufficient evidence to initiate judicial proceedings¹⁶⁹. From the entry into force of Organic Law 1/2025, reforming the LOPJ, this is now the competence of the *Sección de Instrucción del Tribunal de Instancia* / Investigating Section of the Court of Instance. Jurisdiction at first instance lies with the *Juzgado de lo penal* / Criminal Court/ (now the *Criminal Section of the Court of Instance/Sección de lo Penal del Tribunal de Instancia*) if the offense carries a custodial sentence of up to five years under the Spanish Criminal Code¹⁷⁰. Otherwise, competence at first instance belongs to the *Audiencia Provincial* / Provincial Court¹⁷¹, where the events took place.

- **Second instance judicial body:**

Appeals against decisions issued by the Contentious-administrative Courts will be heard by the Contentious-administrative Chamber of the *Tribunal Superior de Justicia*/Superior Court of Justice¹⁷².

Regarding criminal jurisdiction, appeals against decisions of Criminal Courts must be lodged with the *Audiencia Provincial* / Provincial Court¹⁷³, while appeals against Provincial Courts' rulings fall under the jurisdiction of the criminal chamber of the Superior Courts of Justice¹⁷⁴.

- **Third instance judicial body:**

The third instance judicial body responsible for the adjudication of pushbacks is the *Tribunal Supremo*/Supreme Court, particularly the Third Chamber (contentious-administrative jurisdiction) or the Second Chamber (criminal jurisdiction), depending on the nature of the previous proceedings. It must be noted that the cassation appeal is, strictly speaking, an extraordinary one, being limited to certain grounds of appeal, mainly the error of law, as explained in Part 3 of this National Report.

- **Constitutional Court:**

The *Tribunal Constitucional*/Constitutional Court could be seized to adjudicate on the legality of pushbacks through a *recurso de amparo*, an appeal for the constitutional protection of fundamental rights. Appellants' claims against pushbacks usually refer to the infringement of articles 15 (right to life and physical integrity),

¹⁶⁶ In pushbacks, the absence of an administrative decision will mean that the judicial challenge will be brought against a *de facto* administrative action (*vía de hecho*).

¹⁶⁷ 'Contentious-administrative' is a literal translation of 'contencioso-administrativo' used to describe this kind of jurisdiction, which refers to administrative litigation jurisdiction.

¹⁶⁸ Art. 8.4 Spanish law 29/1998, regulating the Contentious-Administrative Jurisdiction / *Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa*, BOE no. 167, 14 July 1998 (hereinafter, LJCA).

¹⁶⁹ Art. 88.1.a) Organic Law 6/1985 on the Judiciary, BOE no. 157, 2 July 1985 / *Ley Orgánica 6/1985, del Poder Judicial* (LOPJ).

¹⁷⁰ Art. 90.2 LOPJ, art. 14.3 *Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*, BOE no. 260, 17 September 1882/ Royal Decree of 14 September 1882 approving the Law on Criminal Procedure (LECrim).

¹⁷¹ Art. 82.1.1º LOPJ, art. 14.4 LECrim.

¹⁷² Art. 10.2 LJCA. There is one Superior Court of Justice per autonomous community in Spain.

¹⁷³ Art. 82.1.2º LOPJ.

¹⁷⁴ Art. 73.3.c) LOPJ.

17 (right to freedom of movement) and 24 (right to an effective remedy and to a fair trial) of the Spanish Constitution.

This Court has also ruled on pushbacks in the context of the constitutional challenge filed against the Additional Tenth Provision of the Spanish Organic Law 4/2000, on Rights and Freedoms of Aliens in Spain, introduced by Organic Law 4/2015 on the Protection of Citizen Security. This provision formalized pushback practices, stating that foreigners detected at the border line of the territorial demarcation of Ceuta and Melilla, while attempting to overcome border containment elements to cross the border irregularly, may be rejected in order to prevent their illegal entry into Spain. The Constitutional Court judgement is analysed below.

Pullbacks:

- **First instance judicial body:**

Pullbacks, normally taking place abroad, do not arrive before Spanish courts. Nonetheless, the appropriate judicial avenue to challenge pullbacks would be the special procedure for the protection of fundamental rights¹⁷⁵, regulated under arts. 114 - 121 of the LJCA. This urgent and expedited procedure is available where the claimant alleges that an act, omission or unlawful material administrative action (*vía de hecho*) has infringed the fundamental rights protected under art. 14 to 29 of the Spanish Constitution or the right to conscientious objection recognised in Article 30(2). The special procedure for the protection of fundamental rights does not contain specific rules on jurisdiction. The competent court is determined in accordance with the general rules on jurisdiction laid down in Arts. 8–14 LJCA. Pursuant to Article 11(1)(a) of the LJCA, where the challenged conduct is attributable to Ministers or Secretaries of State, jurisdiction lies with the Contentious-Administrative Chamber of the National High Court. This was the procedural avenue followed in the *Marine I* case, analysed below, in which the applicants challenged an alleged *vía de hecho* attributable to the Ministers and Secretaries of State for the Interior and Foreign Affairs.

- **Second instance judicial body:**

Decisions delivered in a single instance by the Contentious-Administrative Chamber of the National High Court may only be challenged by means of a cassation appeal before the Supreme Court.

- **Constitutional Court:**

Finally, the Constitutional Court may hear an *amparo* appeal, an appeal for the constitutional protection of fundamental rights. Additionally, international agreements between Spain and its neighbouring countries aimed at preventing migrants from accessing Spain could be subject to a constitutional challenge.

Walls and fences:

- **First instance judicial body:**

Generally, this barrier is contested through appeals against service orders issued by the commanding officers of the *Guardia Civil*, which provide instructions on how *Guardia Civil* agents should act when migrants attempt to overcome the fences.

The execution of the referred orders usually leads to pushbacks. In these cases, deaths or injuries suffered by individuals attempting to overcome the fence could be questioned before the same judicial bodies responsible for the adjudication of pushbacks at first instance.

When adjudicating on these matters, criminal judges have addressed the matter of the multi-fence barrier erected at the Spanish-Moroccan border, determining that both fences are located within Spanish territory, as explained below in this Report.

¹⁷⁵ Art. 53(2) of the Spanish Constitution.

In other cases, the *Guardia Civil*'s service orders have been contested through contentious-administrative proceedings, either before the Contentious-administrative courts or before the contentious-administrative chamber of the National High Court, depending on the jurisdiction of the administrative body that issued the order. Nonetheless, the contentious-administrative judges consider that such service orders constitute an administrative activity that is not subject to appeal. Only the acts adopted in execution of these service orders can be challenged before the contentious-administrative judicial bodies, but not the actual content (instructions, concepts, etc.) of the orders themselves.

- **Second instance judicial body:**

Regarding this barrier, the judicial bodies responsible for second instance decisions are the same as the ones responsible for the adjudication of pushbacks at second instance.

- **Third instance judicial body:**

Both the Third Chamber (contentious-administrative) and the Second Chamber (criminal) of the Supreme Court have jurisdiction to rule on this matter at third instance.

- **Constitutional Court:**

The Constitutional Court is competent to hear an *amparo* appeal for the constitutional protection of fundamental rights.

Detention:

- **First instance judicial body:**

Detention of migrants in immigration detention centres, CIEs, must be authorized by a judicial authority, which, after hearing the person concerned and the Public Prosecutor, shall decide whether to order detention in accordance with the principle of proportionality and other relevant criteria¹⁷⁶. The judge responsible for supervising the stay of foreigners in CIEs and border inadmissibility areas – thus also including the *de facto* situation of detention at international airports – is the Investigating Court (now the investigating section of the Court of Instance) with territorial jurisdiction over the place where they are located. In judicial districts with more than one such court, a specific court must be designated for this purpose¹⁷⁷. This judge shall determine, without further appeal, any petitions and complaints lodged by detainees insofar as they affect their fundamental rights. Likewise, the judge may visit such centers whenever informed of any serious violation or whenever considered necessary. Decisions of the Investigating Court may be challenged by means of a motion for reconsideration (*reforma*) before the same court and, where applicable, by an appeal (*apelación*) before the Provincial Court/ *Audiencia Provincial*. If the Investigating Judge refuses to admit an appeal, the claimant may lodge a complaint (*recurso de queja*) directly with the Provincial Court¹⁷⁸.

For those held in centres for temporary attention of foreigners, CATEs, when disembarking at Spanish shores, art. 58.6 of the Spanish Aliens Act would apply, requiring a judicial authority – the Investigating Court – to authorise detention or interment where the *devolución* cannot be executed within 72 hours.

A final observation can be made with regard to the possible use of *habeas corpus* in detention contexts. Although in Spain *habeas corpus* is constitutionally and legally available as a remedy against unlawful deprivation of liberty¹⁷⁹, there is no evidence of a significant use in the migration and asylum context. According to the Constitutional Court, one of the formal admissibility requirements for *habeas corpus* proceedings is that the deprivation of liberty has not been ordered by a judicial decision, as the remedy

¹⁷⁶ Art. 62.1 of the Spanish Aliens Act.

¹⁷⁷ Art. 62.6 of the Spanish Aliens Act.

¹⁷⁸ See art. 216 et ss. Spanish Law on Criminal Procedure.

¹⁷⁹ Art. 17.4 of the Spanish Constitution and Organic Law 6/1984, 24 May, on the habeas corpus procedure / Ley Orgánica 6/1984, de 24 de mayo, reguladora del procedimiento de «Habeas Corpus», BOE no. 126, 26 May 1984.

cannot serve as a means to review a detention lawfully authorised by a judge¹⁸⁰. This constitutional doctrine may explain the limited practical relevance of *habeas corpus* in the field of migration, since the most common forms of immigration detention in Spain, notably internment in CIEs, are subject to prior judicial authorisation¹⁸¹. As a result, *habeas corpus* remains formally available but functionally marginal in this context, except in cases of irregular execution of detention, exceeding deadlines or supervening illegality.

Regarding asylum decisions in situations of detention, asylum applications submitted at border posts or in CIEs are processed, as explained in Part 1, through the urgent or accelerated procedure. Art. 21 of the Spanish Asylum Act allows the Ministry of Interior to declare inadmissible or reject the applications within a deadline of 4 days. The lapse of that deadline without notification to the applicant has positive silence effects, leading to the admissibility of the asylum request and its processing through the ordinary procedure instead of the border procedure. Against an inadmissibility or rejection decision, a request of *reexamen* can be brought before the Ministry of Interior itself, which shall decide within 2 days. Against any of these negative decisions, the judicial challenges explained below under “procedural barriers” apply.

- **Second instance judicial body:**

Apart from the motion for reconsideration (*reforma*) before the same Court, decisions by the Investigating Court may be subject to appeal, a legal challenge submitted before the Investigating Court but heard by the Provincial Court. Where appeal is declared inadmissible, the claimant may lodge a complaint (*recurso de queja*) directly before the Provincial Court¹⁸².

- **Third instance judicial body:**

As a rule, no ordinary appeal lies against decisions of the Provincial Court delivered on appeal. In matters relating to immigration detention, the decision of the Provincial Court is final within the ordinary judicial system, without prejudice to the possibility of lodging a constitutional complaint before the Constitutional Court.

- **Constitutional Court:**

A ‘*recurso de amparo*’, that is, an appeal for the constitutional protection of fundamental rights, could be filed, particularly on the basis of a violation of articles 17 (right to freedom of movement) and 24 (right to an effective remedy and to a fair trial) of the Spanish Constitution.

Procedural barriers:

- **First instance judicial body:**

When procedural barriers lead to the rejection of international protection applications on the grounds of inadmissibility, the appeal should be lodged before the *Juzgados Centrales de lo Contencioso-Administrativo*/Central Contentious-administrative Courts¹⁸³.

The competence to hear judicial appeals filed against resolutions rejecting applications for international protection correspond to the Contentious-administrative Chamber of the National High Court¹⁸⁴.

If the procedural barrier relates to other administrative procedures on aliens (e.g. suspension of expulsion decisions), the competent body to adjudicate will be the *Juzgados de lo Contencioso-Administrativo*/Contentious-administrative Courts, as explained above¹⁸⁵. In such cases, the competent

¹⁸⁰ Spanish Constitutional Court, judgment 46/2006, 13 February 2006, *amparo* appeal no. 7016/2003.

¹⁸¹ Art. 58.6, 61.1.e) and 62.1 of the Spanish Aliens Act.

¹⁸² See art. 216 et ss. Spanish Law on Criminal Procedure.

¹⁸³ Art. 9.1.e) LJCA.

¹⁸⁴ Art. 11.1.a) LJCA, as those resolutions are acts of the Ministry of the Interior.

¹⁸⁵ Art. 8.4 LJCA.

judge is the one whose jurisdiction includes the seat of the administrative body that issued the contested act or decision.

- **Second instance judicial body:**

Appeals against the decisions issued by the Contentious-administrative Central Courts (inadmissibility of international protection requests) will be heard by the Contentious-administrative Chamber of the National High Court (art. 11.2 LJCA).

Cassation appeals against decisions issued by the Contentious-administrative Chamber of the National High Court (denial of international protection requests) correspond to the Supreme Court (Third Chamber).

Decisions adopted by the Contentious-administrative Courts can be subject to appeal before the Contentious-administrative Chamber of the Superior Court of Justice (art. 10.2 LJCA).

- **Third instance judicial body:**

The judicial body with jurisdiction to adjudicate in this matter on cassation appeals against decisions of the National High Court and Superior Courts of Justice is the Third Chamber (Contentious-administrative) of the Supreme Court.

- **Constitutional Court:**

Procedural barriers can be contested before the Constitutional Court through a *recurso de amparo*, that is, an appeal for the constitutional protection of fundamental rights, mainly on the grounds of a violation of article 24 of the Spanish Constitution (right to an effective remedy and to a fair trial).

Other barriers:

Asylum requests at Spanish diplomatic missions

- **First instance judicial body:**

Since the LJCA does not determine the competent judicial organ to rule on appeals against decisions issued by the Spanish State Administration abroad, the responsible body to adjudicate on this barrier should be, in principle, the Contentious-administrative Chamber of the Superior Courts of Justice, in accordance with the residual rule set out in art.10.1(n) LJCA.

However, the order of the Supreme Court issued on 28th February 2024 solved the conflict of competence this kind of cases raised and stated that the competent body to adjudicate on the application of article 38 of Spanish Law on Asylum is the Contentious-Administrative Chamber of the National High Court¹⁸⁶. This solution is based on the fact that the National High Court is responsible for the adjudication of appeals against rejections of international protection requests (prevalence of judicial competence on the subject matter over judicial competence by reason of the author of the act). The Supreme Court clarified that art. 38 of the Spanish Asylum Act only contains a procedural rule to facilitate the presentation of the asylum request, without altering the legal regime and the procedure to decide on the asylum request once the individual is transferred into Spanish territory and applies for international protection.

- **Second instance judicial body:**

Decisions rendered by the Contentious-Administrative Chamber of the National High Court cannot be subject to any ordinary appeal, but to an extraordinary one, the cassation appeal before the Supreme Court (Third Chamber).

¹⁸⁶ Supreme Court, Order of 28 February 2024, ES:TS:2024:2722A.

- **Third instance judicial body:**

See above.

- **Constitutional Court:**

This barrier could be contested before the Constitutional Court through an *amparo* appeal, that is, an appeal for the constitutional protection of fundamental rights.

Executive bodies involved in asylum access adjudication

Pullbacks, pushbacks and walls and fences.

Pullbacks usually stem from international agreements between Spain and its neighbouring countries, under which Spain either finances these countries' action against illegal migration or participates in joint operations pursuing the same objective. According to the Spanish law on Treaties and other International Agreements¹⁸⁷, the authorization to sign and conclude these agreements correspond to the Council of Ministers (*Consejo de Ministros*). In this matter, the Ministry of Foreign Affairs, European Union and Cooperation (*Ministerio de Asuntos Exteriores, Unión Europea y Cooperación*) and the Ministry of the Interior (*Ministerio del Interior*, competent in matters attributed by the immigration legislation) play a key role, particularly in their negotiation¹⁸⁸.

Secondly, the implementation of pullback agreements and the execution of pushbacks fall to the *Guardia Civil*, which is the competent authority among the State security forces (*Cuerpos y Fuerzas de Seguridad del Estado*) for the surveillance of borders, coasts, ports, airports and related areas¹⁸⁹. Within the *Guardia Civil*, the central authority in this matter is the Command of Borders and Police (*Mando de Fronteras y Policía*), which belongs to the Ministry of the Interior. Two bodies are subordinate to this Command: the *Jefatura Fiscal y de Fronteras*, responsible for the organization and management of border surveillance, and the *Jefatura de Policía Marítima*, tasked with coordinating operations with the European Border and Coast Guard Agency (FRONTEX). Under the *Jefaturas*, the *comandancias* and *puestos* of the *Guardia Civil* - with provincial and municipal jurisdiction, respectively - carry out pushbacks and pullbacks. These are also materially executed by specific posts located at certain border points, such as the *Port Security Detachments/ Destacamentos de Seguridad Portuaria* in Ceuta, Melilla, Algeciras, Palma de Mallorca, etc., and the *Airport Security Detachments/ Destacamentos de Seguridad Aeroportuaria* at Madrid and Barcelona airports.

The National Police/*Policía Nacional* intervenes in pushbacks when these are carried out, not immediately, but following the migrants' stay in Spanish territory (at CATEs, police stations, etc.). Indeed, when migrants are intercepted by the *Guardia Civil* and transferred into Spanish territory, they must be handed over to the National Police¹⁹⁰. Thereafter, the Central Repatriation Unit is responsible for determining the nationality and identity of undocumented individuals upon arrival, and for executing *retornos* and *devoluciones*¹⁹¹. It is also competent to control and coordinate CIEs and CATEs¹⁹². This Unit forms part of the General Commissariat for Immigration and Borders (*Comisaría General de Extranjería y Fronteras*), which

¹⁸⁷ Ley 25/2014, de 27 de noviembre, de Tratados y otros Acuerdos Internacionales, BOE no. 288, 28 November 2014.

¹⁸⁸ In the case of informal or non-legally binding agreements, the Ministries can adopt these with the authorities of the third country; the Council of Ministers will take note of their adoption.

¹⁸⁹ Art. 12.1.B.d) of the Ley Orgánica 2/1986, de 13 de marzo, de Cuerpos y Fuerzas de Seguridad del Estado/ Organic Law 2/1986 on State Security Corps and Forces, BOE no. 63, 14 March 1986; art. 4.8 Real Decreto 7/2024, de 27 de febrero, por el que se desarrolla la estructura orgánica básica del Ministerio del Interior/Royal Decree 7/2024 which develops the basic organic structure of the Ministry of the Interior.

¹⁹⁰ Art. 23.2 Spanish Immigration Regulation.

¹⁹¹ Art. 8.2.d) Orden INT/859/2023, de 21 de julio, por la que se desarrolla la estructura orgánica y funciones de los servicios centrales y territoriales de la Dirección General de la Policía, BOE no. 176, 25 July 2023/ Order 859/2023, which develops the the organic structure and functions of the central and territorial services of the General Directorate of the National Police.

¹⁹² *Ibid.*

in turn falls under the authority of the General Directorate of the National Police/*Dirección General de la Policía Nacional*¹⁹³.

Finally, regarding walls and fences, the decision to erect a multi-fence barrier at the Spanish-Moroccan border, or reform the system, also lies with the Spanish Government, through the Council of Ministers.

- Detention and procedural barriers

Executive bodies involved in detention and procedural barriers are the same ones that intervene in the administrative procedure for the recognition of international protection.

First and foremost, international protection applications must be lodged either with the Office of Asylum and Refuge (*Oficina de Asilo y Refugio*, OAR), at authorised border entry posts, at Immigration Offices (*Oficinas de Extranjeros*), or at certain provincial or district police stations¹⁹⁴. However, the expression of will or intention to request asylum can be received by any other public authority, including police officers, border guards, personnel at detention centres¹⁹⁵, or an examining magistrate, who must communicate it to the authority competent to formalize and register the application¹⁹⁶.

When applications are submitted at border entry posts or CIEs, the competent body to declare inadmissibility is the Ministry of the Interior¹⁹⁷. In all other cases, inadmissibility is also decided by the Ministry of the Interior, at the proposal of the OAR. The latter constitutes an administrative body, under the authority of the Ministry of the Interior, charged with the processing of international protection applications¹⁹⁸. Following an internal reorganisation of the Ministry of the Interior in 2023¹⁹⁹, a Directorate General for International Protection was created and assumed responsibility for the instruction and processing of asylum applications. Within this new structure, the OAR continues to operate as the specialised administrative unit responsible for examining individual applications, now integrated within the DG rather than functioning as an autonomous office.

If the request is declared admissible, the authority responsible for the determining phase of the proceedings is the OAR²⁰⁰, which will ultimately submit a proposal of resolution to the Interministerial Commission on Asylum and Refuge (*Comisión Interministerial de Asilo y Refugio*)²⁰¹. This Commission will submit a further proposal to the Ministry of the Interior, which will grant or deny international protection.

Finally, decisions declaring inadmissible or rejecting international protection applications submitted at border posts and at CIEs can be challenged administratively, through a request for reconsideration (*petición de reexamen*), to be filed within 2 days from the notification of the negative decision. This request for reconsideration, which has suspensive effects of the challenged decision, is also decided by the Ministry of the Interior and must be adopted within a deadline of 2 days²⁰². The rest of resolutions adopted through

¹⁹³ Art. 3.3.d) of *Real Decreto 207/2024, de 27 de febrero, por el que se desarrolla la estructura orgánica básica del Ministerio del Interior*, BOE no. 52, 28 February 2024 / Royal Decree 207/2024 developing the basic organic structure of the Ministry of the Interior.

¹⁹⁴ Art. 4.1 of *Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del derecho de asilo y de la condición de refugiado, modificada por la Ley 9/1994, de 19 de mayo* / Royal Decree approving the Regulation implementing Law 5/1984, of March 26, regulating the right to asylum and refugee status, amended by Law 9/1994, BOE no. 52, 2 March 1995.

¹⁹⁵ Supreme Court, judgment of 6 November 2024, appeal no. 7691/2022, ECLI:ES:TS:2024:5568, § 6 (analysed in this part of the Report).

¹⁹⁶ CJEU, case C-36/20 PPU, *VL/Ministerio Fiscal*, EU:C:2020:495 (analysed in this part of the Report).

¹⁹⁷ Arts. 21 and 25.2 of Spanish Law 12/2009 on asylum and subsidiary protection / *Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*, BOE no. 263, 31 October 2009.

¹⁹⁸ Art. 23.1 of Spanish law 12/2009.

¹⁹⁹ Royal Decree 1009/2023, of 5 December, establishing the basic organizational structure of the ministerial departments / *Real Decreto 1009/2023, de 5 de diciembre, por el que se establece la estructura orgánica básica de los departamentos ministeriales*, BOE no. 291, 6 December 2023.

²⁰⁰ *Ibid.*

²⁰¹ Art. 24.2 of Spanish Law 12/2009.

²⁰² Art. 21.4 of Spanish Law 12/2009.

an ordinary procedure will put an end to the administrative procedure and therefore can be appealed directly before the administrative-contentious jurisdiction, or be subject first to an optional appeal for reconsideration (*recurso de reposición*)²⁰³.

The National Police (Central Repatriation Unit) is the authority responsible for executing the different orders on mandatory or forced exit from the Spanish territory²⁰⁴, regulated in the Spanish Aliens Act. Firstly, “return” (*retorno*) is the effect of the entry ban in Spain which is accorded against those third-country national who enter through habilitated border posts and do not fulfil the entry conditions into the territory (art. 60 of Spanish Aliens Act); “expulsion” (*expulsión*) is the measure adopted against those third-country nationals who are found irregularly in Spanish territory because they did not obtain an extension of their stay permit or they lack authorisation to reside (art. 57 of Spanish Aliens Act); and “*devolución*”²⁰⁵ is the measure adopted against those third-country nationals who contravene an entry ban after having been expelled, and those who attempt to enter illegally, including those who are intercepted at the border or its vicinity (art. 58.3.b) of Spanish Aliens Act and art. 23.1.b) of the Aliens Regulations). The 10th Additional Provision to Organic Law 4/2000 on the special regime on Ceuta and Melilla, which is analysed in this project as object of a ‘leading decision’ on pushbacks, has created a new legal institution known as “rejection at the border”, applicable to those third-country nationals who are detected in the border line of the territorial demarcation of Ceuta and Melilla while attempting to surpass the elements of border contention to irregularly cross the border²⁰⁶.

When a *devolución* cannot be carried out in a 72-hour time limit, the National Police may request the judicial authority to order the individual’s internment in an Immigration Detention Centre, CIE²⁰⁷. Also, CIEs, CATEs and “asylum rooms” at Spanish airports, where these detentions take place, are controlled and coordinated by the same unit of the National Police²⁰⁸.

Regarding specific barriers, the authority responsible for implementing art. 38 of Spanish Law 12/2009, and for determining whether applicants should be transferred from Spanish diplomatic missions abroad to Spanish territory, is the Spanish Ambassador, as clarified by the Supreme Court²⁰⁹. As explained in Part 1 of this Report, the Spanish Ministry of Foreign Affairs and Cooperation is responsible for authorizing the issuance of the necessary laissez-passer, and the OAR of the Ministry of Interior shall favourably report on that authorization.

As far as airport transit visas are concerned, access and exit of foreign nationals to and from Spanish territory is controlled by the National Police²¹⁰. More specifically, the responsible body for carrying out documentation checks at border posts is the Central Border Unit (*Unidad Central de Fronteras*), under the *Comisaría General de Extranjería y Fronteras*²¹¹. National Police controls are established within the international area of Spanish airports. In order to access Spanish territory, individuals must undergo documentation checks. In this regard, the Central Border Unit acts as the Spanish authority responsible for coordination with the European Entry/Exit System (SEE)²¹² and the European Travel Information

²⁰³ Art. 29 of Spanish Law 12/2009.

²⁰⁴ Art. 8.2.d) Orden INT/859/2023, de 21 de julio.

²⁰⁵ The original term in Spanish will be used through the report, as no specific translation that responds to the features of this legal institution can be found.

²⁰⁶ According to this provision, the “rejection at the border” aims at preventing illegal entry into Spain, so this cannot be qualified *stricto sensu* as a form of forced exit. In addition, no measure or order is neither adopted to implement the rejection.

²⁰⁷ Art. 23.4 Spanish Immigration Regulation.

²⁰⁸ Art. 8.2.d), Orden INT/859/2023, de 21 de julio.

²⁰⁹ Supreme Court, judgment of 6 February 2024, appeal no. 2628/2023, ECLI:ES:TS:2024:680, § 5.

²¹⁰ Art. 12.1.A.b) of Organic Law 2/1986 on State Security Corps and Forces.

²¹¹ Art. 3.3.d) Royal Decree 207/2024.

²¹² Regulation (EU) 2017/2226 of the European Parliament and of the Council, of 30 November 2017, establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external

and Authorisation System (ETIAS)²¹³, both of which are information systems designed to register entry and exit of third-country nationals into and out of Schengen territory.

As regards, more specifically, the involvement of these executive bodies in Spanish case-law on barriers to access asylum, it can be observed that national police and *Guardia Civil* agents appear in criminal proceedings concerning pushbacks. For the rest, the State Attorney acts, whether as appellant or respondent, in all judicial proceedings on behalf of the administrative organs which have intervened in the interception/rescue of the applicant, the asylum procedure, the immigration proceedings, or the detention of the asylum seeker. When a minor or especially vulnerable person are involved in a case, the Public Prosecutor's Office also participates.

International or regional organizations involved in asylum access adjudication

- United Nations High Commissioner for Refugees (UNHCR)

The preamble of Law 12/2009 specifically mentions the United Nations High Commissioner for Refugees, who is entitled to play a significant role in the processing of asylum applications in Spain, strengthening thus the safeguards applicable to the asylum procedure²¹⁴.

UNHCR intervenes at different stages of international protection procedures. First and foremost, when presenting a request for international protection, applicants have the right (for that purpose, they must be informed about this possibility in a language they understand) to contact UNHCR, seeking for legal advice²¹⁵. Also, UNHCR must be informed of every international protection request that has been lodged, and of the status of the files, it must be present at the hearings with the applicant and submit reports for inclusion in the file²¹⁶.

UNHCR will also have access to applicants, including those in border facilities or in foreign detention centers or penitentiaries. When applications are submitted at border posts, a previous report from UNHCR is mandatory to declare them inadmissible, to reject them or to extend the deadline for issuing a rejection resolution, under art. 21 of the Spanish Asylum Act ²¹⁷.

In cases where applications are examined through the urgent procedure, and where an application is declared admissible under art. 20, if the resolution proposal from the OAR is unfavourable, UNHCR will be given ten days to provide a report²¹⁸.

Reports from UNCHR are not binding under any of the procedures provided for in Law 12/2009, although their relevance is acknowledged²¹⁹. This issue has been addressed by the Supreme Court in its case-law. In case 753/2013, the Supreme Court observed that there was no evidence that the Administration had taken into account UNHCR's reports supporting the admissibility of the application. As the administrative decision neither referred to nor provided any reasoning regarding those reports, this constitutes, according to the Supreme Court, a clear infringement of the Spanish Asylum Act 12/2009,

borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) n° 767/2008 and (EU) n° 1077/2011.

²¹³ Regulation (EU) 2018/1240 of the European Parliament and of the Council, of 12 September 2018, establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) n° 1077/2011, (EU) n° 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

²¹⁴ Penultimate paragraph of the Spanish Asylum Act, Law 12/2009 on asylum and subsidiary protection.

²¹⁵ Art. 17.3.c) of Spanish Asylum Act.

²¹⁶ Art. 34 of Spanish Asylum Act.

²¹⁷ Art. 35.2 of Spanish Asylum Act.

²¹⁸ Art. 35.3 of Spanish Asylum Act.

²¹⁹ Spanish Ombudsman/*Defensor del Pueblo*, Estudio sobre el asilo en España, *La protección internacional y los recursos del sistema de acogida*, 2016, available at https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_Espa%C3%B1a_2016.pdf, p. 41.

which assigns to this organism a transcendental role in the processing of asylum application as the preamble to the Law highlights²²⁰.

Finally, when applications are declared admissible, the UNHCR has the right to attend the determination proceedings and the meetings of the Interministerial Commission on Asylum and Refuge, as well as to issue reports that must be included in the file.

- European Border and Coast Guard Agency

FRONTEX intervenes in border management within EU Member States, thus being involved in barriers to asylum access such as pushbacks and pullbacks. In Spain, two authorities act in coordination with FRONTEX: the *Jefatura de Policía Marítima* of the *Guardia Civil* and the *Brigada de Coordinación para asuntos relacionados con la Agencia FRONTEX* of the *Policía Nacional*.

Among FRONTEX's activities supporting Member State's border management, joint operations and rapid border interventions are conducted at external areas under significant migratory pressures. In the context of these operations (known as operational response), coast guard teams along with vessels, aircraft, vehicles and other technical equipment are deployed²²¹.

FRONTEX also assists Member States with return operations, identifying migrants upon arrival, carrying out forced returns, and coordinating such operations when the means of transport and escort officers are provided by the non-EU country of destination²²². In this regard, complaints have been filed with the Spanish Ombudsman, reporting that hearings conducted by FRONTEX's officers with individuals arriving by sea were held without legal counsel and without prior information about their rights²²³. Finally, FRONTEX partially intervenes in the barrier "walls and fences", since it provides technical equipment in order to reinforce Member States' border surveillance.

- European Agency for Asylum (EUAA)

The EUAA offers technical and operational assistance to the Spanish authorities in order to implement the Common European Asylum System. In this regard, the Spanish government signed with the EUAA an Operational Plan for 2023-2026, by which the latter will provide further personnel for the monitoring of asylum procedures and for the reception of migrants at CETIs²²⁴. This Agency may thus intervene in barriers to accessing asylum such as procedural barriers and detention.

C. Legal context and legal system

Spain belongs to the continental civil law tradition, in which legislation constitutes the primary source of law. The Spanish legal system is founded on the 1978 Constitution, which is the supreme norm of the domestic legal order. The hierarchy of legal sources comprises the Constitution, international treaties, European Union law, statutes (organic and ordinary acts), delegated legislation, and regulations adopted by the executive. In the field of asylum, the legal framework is shaped not only by domestic legislation but also, to a significant extent, by the Common European Asylum System, whose instruments have been implemented or are directly applicable in Spain.

²²⁰ Supreme Court, judgment of 28 February 2014, appeal no. 753/2013, ECLI:ES:TS:2014:729, § 7.

²²¹ Special Report (2021), "Frontex's support to external border management: not sufficiently effective to date", *European Court of Auditors*, p. 11.

²²² *Ibid.*, p. 11

²²³ Complaint with the Spanish Ombudsman, 11 November 2022, n° 22001642, <https://www.defensordelpueblo.es/resoluciones/planes-operativos-de-las-actuaciones-de-frontex-en-espana/>

²²⁴ Ministerio de Inclusión, Seguridad Social y Migraciones, "El Gobierno firma con la Agencia de Asilo de la Unión Europea un Plan Operativo para los años 2023-2026", 12 July 2023, <https://www.inclusion.gob.es/w/el-gobierno-firma-con-la-agencia-de-asilo-de-la-union-europea-un-plan-operativo-para-los-anos-2023-2026/>

The international instruments to which Spanish judicial bodies refer when assessing the legality of barriers to access asylum are the Geneva Convention relating to the Status of Refugees of 1951 (Geneva Convention) and the New York Protocol of 1967, as well as the European Convention on Human Rights and Fundamental Freedoms of 1950 (ECHR).

When referring to the principle of *non-refoulement*, Spanish courts generally rely on art. 19.2 of the EU Charter of Fundamental Rights, its interpretation being informed by art. 33 of the 1951 Geneva Convention or qualified as the concretisation in EU law of that international law provision²²⁵. In other cases, judicial reasoning proceeds directly from the principle of *non-refoulement* as recognized as a fundamental right in articles 18 and 19.2 of the EU Charter²²⁶.

Most references to the EU Charter of Fundamental Rights in asylum access cases are indirect, as they derive from CJEU case-law relied upon in the national judgment²²⁷. In other cases, the court simply refers to the Charter as applicable legal norm²²⁸.

A relevant case for this purpose was delivered by the National High Court which grants an appeal against a denial of asylum by negative administrative silence, foreseen in the Spanish legislation on asylum. The Court held this as contrary to EU law, particularly Directive 2013/32 on common procedures for granting and withdrawing international protection (and its predecessor Directive 2005/85) which requires decisions rejecting asylum applications to be motivated and given in writing, an obligation not transposed into the Spanish legal order. The reasoning of the Court is inspired by several provisions of the EU Charter of Fundamental Rights, the verdict being specifically based on a violation of the right to an effective remedy of art. 13 of the ECHR and the right to good administration of art. 41 of the EU Charter²²⁹. It is striking however that not a single reference to ECtHR or CJEU case-law is included. Reference to art. 19.1 of the EU Charter of Fundamental Rights is made in other cases as a supporting argument against qualifying a group of return orders (*devoluciones*) as a collective expulsion²³⁰.

Spanish judicial bodies do not invoke cases or legislation from foreign jurisdictions, or at least no evidence of that practice has been found.

Reference to decisions from international or supranational tribunals

Spanish courts frequently refer to judgments issued by supranational courts in cases concerning barriers to access asylum. More particularly, references are usually made to CJEU case-law, followed by that of the ECtHR.

CJEU judgments are often quoted in Spanish cases related to procedural barriers and to detention, where the issues at stake relate to aspects governed by EU secondary law on asylum, such as Directive 2013/32/EU on common procedures for granting and withdrawing international protection (the 'Procedures Directive') or Directive 2013/33/EU on reception conditions (the 'Reception Conditions Directive'), that have been quite extensively interpreted by the CJEU. In Spanish case-law, it is usual to find literal replication of extensive passages from CJEU judgments²³¹.

²²⁵ Constitutional Court, judgment of 19 November 2020, appeal 2896/2015 (constitutional challenge against Organic Law on the Protection of Citizen Security).

²²⁶ Supreme Court, 13 December 2021, 7863/2020, ECLI:ES:TS:2021:4935. See also Supreme Court, judgment of 18 April 2023, appeal no. 698/2022, ECLI:ES:TS:2023:1560.

²²⁷ See Supreme Court, judgment of 29 November 2022, appeal 1314/2022.

²²⁸ Supreme Court, 29 October 2019, appeal 1059/2018, ECLI:ES:TS:2019:3410; Order of the Preliminary Investigation Court, January 2020.

²²⁹ National High Court, judgment of 30 November 2017, appeal no. 590/2016, ECLI:ES:AN:2017:5192.

²³⁰ Superior Court of Justice of Andalucía, judgment of 22 March 2023, appeal no. 168/2022, ECLI:ES:TSJAND:2023:6282.

²³¹ See, e.g., Supreme Court, judgment of 29 November 2022, appeal no. 1314/2022 (referring extensively to case C-181/16, *Gnandi*, as well as mentioning case C-808/18, C-269/18, and C-322/19) or National High Court, order of 21 September 2021, appeal no. 1754/2020, ECLI:ES:AN:2021:6777A (referring to case C-808/18, *Commission v Hungary*).

It is relevant to refer here to the judgments issued by the Superior Court of Justice of Andalucía which decided an interpretation shift in its case-law as a consequence of the interpretation given by the CJEU to the Procedures Directive. In cases related to the suspension of the expulsion procedure until the Administration decides on the asylum request submitted by the applicant, the Court decided that the moment from which the suspension should apply is that of expressing the intention to apply for asylum before any authority, including police officers, and not from the lodging and registration of the application²³². This shift in its doctrine is founded, as explicitly indicated in the judgment, in the interpretation provided by the CJEU in case C-36/20 PPU²³³. The Superior Court of Justice added, in its reasoning, the principle of direct effect of EU directives as recognised also by the CJEU. Similarly, the National High Court supports its reasoning in CJEU case-law interpreting the Procedures Directive, leading to declare that an asylum applicant has the right to remain in the territory while the legal action against the decision rejecting its asylum application is being examined²³⁴.

With however less impact, Spanish cases also include references to CJEU case-law in order to substantiate certain concepts or principles, such as, for instance, when applying the concepts of ‘safe third country’ and ‘safe country of origin’²³⁵, or the notion of refugee²³⁶.

On the other hand, albeit less frequently, ECtHR case-law is also referred to when interpreting the scope of fundamental rights.

A particularly relevant example is provided by the case-law of the Constitutional Court, both when deciding constitutional complaints (*recursos de amparo*), which seek protection against alleged violations of the fundamental rights enshrined in the Constitution, and when ruling on constitutional challenges based on the alleged incompatibility of legislation with constitutional provisions protecting fundamental rights. For instance, in the judgment of 19 November 2020, regarding the constitutional challenge against Organic Law on the protection of citizens security by which the special regime on Ceuta and Melilla legalising pushbacks was adopted, the Constitutional Court referred to ECtHR case-law to support several arguments²³⁷. This was the case as regards those related to the obligation of states to protect human rights in extraterritorial settings (*Hirsi Jamaa*) and thus the inadmissibility of ‘no-law zones’; to confirm how the special regime of Ceuta and Melilla, in light of its singular context, was already assessed as not being against art. 4 of Protocol 4 prohibiting collective expulsions (*ND and NT v Spain*)²³⁸; the principle of non-refoulement and the obligations of States when repatriating migrants or expelling them to countries of transit (*Saadi v Italy*, *Sellem v Italy*, *Daoudi v France*, among others); or the duty to provide effective means of access to legal entry procedures into the territory in order to ask for protection (*ND and NT v Spain*)²³⁹.

We also find references to ECtHR case-law in inferior instances, such as the Order of the First Instance and Preliminary Investigation Court no. 2 of Melilla, which extensively supported its reasoning in ECtHR

²³² Superior Court of Justice of Andalucía of 22 March 2023, appeal no. 158/2022, ES:TSJAND:2023:6278 and of 3 July 2023, appeal no. 947/2021, ES:TSJAND:2023:16647.

²³³ Case C-36/20 PPU, *VL / Ministerio Fiscal*, EU:C:2020:495.

²³⁴ National High Court, order of 21 September 2021, appeal no. 1754/2020, ECLI:ES:AN:2021:6777A (referring to case C-808/18, *Commission v Hungary*, and case C-269/18 PPU, *C and others*). On the same subject, a significant impact of CJEU case-law can be found in Supreme Court, judgment of 29 November 2022, appeal no. 1314/2022, as will be detailed below.

²³⁵ National High Court, judgment of 2 February 2018, appeal no. 397/2017, ECLI:ES:AN:2018:428 (referring to cases C-411/10 y C-493/10, *N.S. and M.E. and others*, or case C-695/15 PPU, *Mirza*).

²³⁶ National High Court, judgment of 17 October 2016, appeal no. 165/2016, ECLI:ES:AN:2016:3838 (referring to case C-472/13, *Shepherd*).

²³⁷ Constitutional Court, judgment of 19 November 2020, appeal no. 2896/2015.

²³⁸ See the dissenting opinion by Judge María Luisa Balaguer Callejón to this case, which, as regards the special regime of Ceuta and Melilla, invokes how the majority opinion of the Court discarded compliance with some of the conditions set by the ECtHR in *ND and NT v Spain*.

²³⁹ See also the *amparo* appeal solved in Constitutional Court, judgment of 21 December 2010, appeal no. 9208/2009, in which the Constitutional Court refers to the obligation of States to organize their judicial system in a way that allows the respect of the right to obtain a final decision within a reasonable deadline (*Lenaerts v Belgium*).

judgments to interpret the criminal offence of degrading treatment by reference to that concept in art. 3 ECHR (*Ireland v United Kingdom*, 1978; *Jalloh v Germany*; *Aksoy v Turkey*, *Egmez v Cyprus*, *Krastanov v Bulgaria*) and the scope of an effective judicial investigation (*Corsacov v Moldova*, *Assenov and other v Bulgaria*) regarding the police intervention at the ‘massive’ attempts to cross the Spanish-Moroccan border at Melilla in 2014²⁴⁰. The Superior Court of Justice of Canarias also applied case *ND and NT v Spain* to exclude that a return order (*devolución*) of migrants intercepted at sea could be qualified as a collective expulsion²⁴¹.

Apart from supporting the national courts’ interpretation of fundamental rights, the Supreme Court also mentioned the ECtHR judgment in *ND and NT v Spain*, in one of the cases of “asylum at diplomatic missions”, in order to confront the Spanish government with its own position defended in that case, which showed, as declared by the Strasbourg Court, that art. 38 of the Spanish Asylum Act, on the transfer into Spain to apply for asylum, was already applicable in spite of the lack of normative development through an implementing regulation²⁴².

The limited number of cases in which Spanish courts dealing with access to asylum refer to ECtHR case-law is however striking, more particularly, where no references at all are found in certain judgments. For instance, the Supreme Court, when assessing the return of minors to Morocco undertaken by the Spanish authorities in 2022 without following any procedure, declared this action to constitute a collective expulsion contrary to art. 4 of Protocol 4 to the ECHR without mentioning ECtHR case-law²⁴³.

D. Laws and norms at the domestic level

The principle of non-refoulement

The principle of *non-refoulement* forms part of the Spanish legal order by virtue of Spain’s ratification of the Geneva Convention relating to the status of refugees, the European Convention on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other international treaties. In addition, as Member State of the EU and on the basis of EU law primacy in the Spanish internal legal order, Spain is bound to respect this principle as enshrined in the EU Charter of Fundamental Rights (art. 19) and the TFEU (art. 78.1), both of which enjoy the value of EU primary law²⁴⁴.

Art. 15 of the Spanish Constitution recognizes everyone to have the right to life and to physical and moral integrity, as well as the absolute right not to be subjected to torture or inhuman or degrading treatment or punishment, recognizing thus the principle of *non-refoulement* as reflected in art. 3 ECHR.

Art. 36 of the Spanish Law 12/2009 on Asylum and Subsidiary Protection enshrines protection against refoulement – according to the terms set in international treaties signed by Spain – as one of the rights derived from the granting of asylum or subsidiary protection status.

²⁴⁰ Order of the First Instance and Preliminary Investigation Court no. 2 of Melilla of 11 August 2015, procedure no. 866/2014.

²⁴¹ Superior Court of Justice of Canarias, judgment of 22 December 2021, appeal no. 434/2021, ECLI:ES:TSJICAN:2021:4449.

²⁴² Supreme Court, judgment of 15 October 2020, appeal no. 4989/2019, ECLI: ES:TS:2020:3445. See also Supreme Court, judgment of 6 February 2024, appeal no. 2628/2023, ECLI:ES:TS:2024:680.

²⁴³ Supreme Court, judgment of 22 January 2024, appeal no. 6480/2022, ECLI:ES:TS:2024:114. Also, in National High Court, judgment of 30 November 2017, appeal no. 590/2016, ECLI:ES:AN:2017:5192, the decision is based on an infringement of art. 13 ECHR and 41 of CFR while no reference can be found to ECtHR or CJEU case-law.

²⁴⁴ National courts also refer to sources of EU secondary law that acknowledges the principle, such as the Return Directive (art. 5).

As far as access to asylum is concerned, the Geneva Convention is mostly cited, as indicated above, regarding the protection of the principle of *non-refoulement*²⁴⁵, which also receives autonomous references as a principle²⁴⁶.

The principle of *non-refoulement* acquires particular significance in cases related to the suspension of expulsion procedures as a consequence of the lodging of an asylum application. For instance, the principle guides the answer of the Supreme Court in case 7863/2020 to sustain the right to suspend an expulsion procedure, and not just to paralyse its execution, while the examination of an asylum application is pending²⁴⁷. In case 698/2022, the suspension effects of asylum applications over expulsion procedures are also extended, by reference mainly to the principle of *non-refoulement* and CJEU case-law, to surrender to third countries' authorities by cause of extradition²⁴⁸.

The principle of *non-refoulement* lays also at the basis of one the claims examined by the Constitutional Court when reviewing the constitutionality of the 10th Additional Provision of the Organic law on aliens, which formalized the practice of pushbacks. The Constitutional Court's conclusion was controversial. Relying primarily on ECtHR case-law (*ND and NT v Spain*), it held that the special regime on Ceuta and Melilla is compatible with this principle because the State provides effective legal avenues for accessing international protection²⁴⁹.

The right to asylum

Art. 13 of the Spanish Constitution provides that the law shall lay down the terms in which third-country nationals and stateless persons will be able to enjoy the right to asylum in Spain, containing thus a mandate to the legislator to ensure that right.

Art. 2 of the Spanish Asylum Act defines the “right to asylum” (“*derecho de asilo*”) as the protection conferred on non-EU nationals or stateless persons to whom the condition of refugee is recognised in the terms of this law and those of the Geneva Convention and its 1967 Protocol.

In particular, the right to asylum, as enshrined in Article 18 of the Charter of Fundamental Rights of the European Union, forms part of the Spanish legal order, and constitutes a real right to international protection where the conditions laid down in Article 1 of the 1951 Geneva Convention are fulfilled²⁵⁰.

Art. 18 of the Spanish Asylum Act grants applicants for international protection the following rights: to be issued with documentation certifying their status as applicants for international protection; to free legal assistance and the assistance of an interpreter; to have UNHCR informed of their application; to the suspension of any return, expulsion or extradition proceedings affecting them²⁵¹; to access the contents of

²⁴⁵ See, for instance, Contentious-Administrative Court no. 4 of Málaga, judgment of 22 April 2022, procedure no. 797/2019, in which the Court refused to suspend the expulsion procedure because the asylum application had not been formally lodged and therefore the protection afforded by the principle of *non-refoulement* could not be granted (this judgment was overturned by the Superior Court of Justice of Andalucía, judgment of 3 July 2023, appeal no. 1568/2022, ECLI: ES:TSJAND:2023:14550).

²⁴⁶ See Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019, on the protection the asylum seeker should receive from the moment he/she expresses, before the examining magistrate, the intention to apply for international protection. From that moment, the applicant should not be detained.

²⁴⁷ Supreme Court, judgment 13 December 2021, appeal no. 7863/2020, ECLI:ES:TS:2021:4935.

²⁴⁸ Supreme Court, judgment of 18 April 2023, appeal no. 698/2022, ECLI:ES:TS:2023:1560.

²⁴⁹ Constitutional Court, judgment of 19 November 2020, appeal no. 2896-2015. The dissenting vote of Judge María Luisa Balaguer on this case conversely considers the provision to be unconstitutional on the basis of its opposition to art. 13.4 and 15 of the Spanish Constitution with regard to the right to international protection and the principle of *non-refoulement*.

²⁵⁰ Gil-Bazo, M.T., “Refugee status, subsidiary protection, and the right to be granted asylum under EC law”, *New Issues in Refugee Research*, Research Paper no. 136, 2006.

²⁵¹ As will be explained below in the analysis of ‘leading decisions’, national case-law, particularly in application of EU directives and CJEU judgments, has recognised this right to asylum seekers from the expression of their intention to apply for asylum, without having to await the formal lodging of the application. The right to suspension must include the provisional authorization to remain in Spanish territory and to work, rights which, together with other reception conditions, have been extended until the judicial actions brought against the rejection of asylum applications have been decided.

their file at any stage of the procedure; to healthcare; and to the social benefits provided for in the Act. In addition, pursuant to Article 9 of the Spanish Aliens Act (Organic Law 4/2000), all foreign nationals under the age of 16, including applicants for international protection, are entitled to compulsory education, while those under the age of 18 are also entitled to post-compulsory education, including upper secondary education.

Art. 30-33 of the Spanish Asylum Act establish which reception conditions are to be provided to applicants for international protection: social and reception services to satisfy basic needs in conditions of dignity for those who lack economic resources; reception services; as well as access to employment. The Act refers to implementing regulations for the further development of these rights. For this purpose, Royal Decree 220/2022, of March 29, approving the Regulation on the reception system in matters of international protection, governs access, characteristics, itinerary, content and termination of the Spanish reception system for international protection in Spain to which asylum and subsidiary protection seekers without economic resources are entitled (the system also applies to applicants and beneficiaries of temporary protection).

According to art. 36 of the Spanish Asylum Act, the granting of the refugee status leads to the enjoyment of the rights set in the Geneva Convention, the legislation on aliens and immigration, and EU law, as well as, in any case, protection against refoulement; access to be informed of all the rights and obligations associated to the status of refugee in a language the beneficiary knows; permanent authorization to reside and work; the issuance of identity and travel documents; access to public services on employment; access to education, health assistance, housing, protection to victims of gender violence, assistance from social services, social security and integration programmes, in the same conditions as Spanish citizens; access, also in the same conditions as Spanish citizens, to lifelong learning and occupational learning, to traineeship, as well as procedures of academic and professional recognition; freedom of movement; access to integration programmes; access to programmes of assistance to voluntary return; and preservation of family unit and access to support programmes for that purpose.

Sources of international refugee law that are relevant to asylum access adjudication

The 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol are the main sources of international refugee law in Spain. After Spain adhered to these treaties and once published in the State Official Bulletin (*Boletín Oficial del Estado*, BOE), they became part of the internal legal order. Following an international law reception system of moderate monism, treaties validly ratified and officially published in Spain form part of the Spanish legal order²⁵². The instrument of accession by Spain to the Geneva Convention and to the 1967 Protocol was approved on 22 July 1978, the Convention entering into force for Spain on 12 November 1978, and the Protocol on 14 August 1978²⁵³.

Other human rights obligations

In addition to the Refugee Convention, the ECHR is the main instrument of human rights protection referred to in Spanish judicial decision (see above for developments).

References, albeit much more limited, to the UN Convention on the Rights of the Child can also be found. In particular, in the judgment deciding on the constitutional challenge against Organic Law on the Protection of Citizens Security, the Constitutional Court declared that State security forces shall implement rejections at the border, provided by the new provision on the special regime of Ceuta and Melilla of the Organic Law on aliens, with special attention to particularly vulnerable persons such as minors, especially those not accompanied by their families. For that purpose, authorities shall especially care for ensuring the “rights recognised in art. 3.1” of the UN Convention on the rights of the child (the best interest of the

²⁵² Art. 96.1 of the Spanish Constitution.

²⁵³ BOE no. 252, 21 October 1978.

child)²⁵⁴. At her dissenting opinion, Judge María Luisa Balaguer Callejón declares that compliance with international obligations as a condition to accept the constitutionality of rejections at the border is rendered impossible at least as far as minors are concerned. The opinion refers to the Communication by the Committee of the Rights of the Child of 12 February 2019 (CRC/C/80/DR/4/2016) which established that the practice of summary expulsions carried out by Spanish public officials violates Spain's international obligations under art. 20.1 (protection by the State to every minor deprived of her family environment) and art. 37 (prohibition of torture, cruel, inhumane or degrading treatment) of the UN Convention of the Rights of the Child, insofar as this practice does not allow to subject minors to an identification process, or to evaluate their personal situation and the existence of a risk of persecution and/or irreparable damage prior to their handover to Moroccan authorities and without providing them with the opportunity to object to that return²⁵⁵.

References, albeit scarce, can also be found to the Universal Declaration on Human Rights²⁵⁶.

Membership in a regional or other international organization

Spain is a Member State of the European Union since 1 January 1986; on that condition, it is bound to respect the EU Treaties, the EU Charter of Fundamental Rights, as well as EU secondary law on asylum.

It is important to note that Spain did not proceed to the transposition of the asylum directives of the second phase of the CEAS, such as the Procedures Directive 2013/32, the Reception Conditions Directive 2013/33 or the Qualification Directive 2011/95. In January 2023, a letter of formal notice was sent to Spain, as an initiation of an infringement procedure by the Commission for failing to transpose in a fully conform manner all provisions of the Reception Conditions Directive²⁵⁷.

This explains the importance in Spain of judicial decisions which lead to the application of the standards contained in EU directives through the principle of direct effect of these norms and in light of CJEU case-law interpreting those provisions, as it occurs, for instance, regarding the formalities to submit asylum applications and the authorities competent to receive them; or the rights and benefits of applicants of international protection, particularly the suspension of any expulsion procedure while their application is being examined or a judicial action against a negative decision is pending, and the extension of those rights and benefits conforming the applicant's status, as we will see in some of the leading decisions examined in this Part 2 of the National Report. There are also examples of cases in which the judgment is based on an autonomous reading by the Spanish court of the provisions of EU directives on asylum, as in the already mentioned case in which the denial of asylum through negative silence is considered contrary to Spain's obligations under EU law on the need to adopt written and motivated decisions on asylum²⁵⁸.

Another obstacle to effective protection that can be identified in Spanish legislation on asylum is the lack of an implementing regulation ensuring the necessary normative developments of the Spanish Asylum Act, Spanish law 12/2009 on asylum and subsidiary protection²⁵⁹. The applicable regulation is that corresponding to the previous law, still being applied as far as its provisions do not conflict with the

²⁵⁴ Constitutional Court, judgment of 19 November 2020, appeal no. 2896/2015, p. 80.

²⁵⁵ In the case related to the collective expulsion of minors to Morocco, the Supreme Court (judgment of 22 January 2024, appeal no. 6480/2022, ECLI:ES:TS:2024:114; does not mention the UN Convention on the Rights of the Child, although the Public Prosecutor invoke it and the Spain-Morocco Agreement of 2007 applied in the case also referred to the Convention. The same occurs in Supreme Court, judgment of 22 January 2024, appeal no. 8800/2022, ECLI:ES:TS:2024:274, addressing the same facts and in which the State Attorney referred to the UN Convention too.

²⁵⁶ A single reference in the list of 40 cases is found in Supreme Court, judgment of 29 October 2019, appeal no. 1059/2018, ECLI:ES:TS:2019:3410, specifically to the right to asylum of art. 14.

²⁵⁷ European Commission, "January Infringement Package: key decisions", https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142

²⁵⁸ National High Court, judgment of 30 November 2017, appeal no. 590/2016, ECLI:ES:AN:2017:5192.

²⁵⁹ The Third Final Provision of Law 12/2009 order the adoption of an implementing regulation within 6 months from the entry into force of the law.

Spanish Asylum Act²⁶⁰. This situation preserves legal uncertainty and discretion in the Administration, which has adopted a restrictive stance on the rights of asylum seekers and the safeguards to apply in certain procedures, particularly as regards effective access to the asylum procedure or the deficient reception conditions in border areas²⁶¹. The lack of an implementing regulation on asylum has also contributed to the disparities with EU directives on this matter and its standards of protection.

The role of soft law in asylum access adjudication

Spanish case-law on access to asylum provides some examples of the role played by soft law.

Firstly, we can mention the Circular Letter to Spanish Ambassadors of 20 November 2019²⁶², containing the instructions delivered to Spanish diplomats in order to apply art. 38 of the Spanish Asylum Act until the adoption of its implementing regulation. The Supreme Court resorts to this soft law instrument to support its verdict on the main normative elements ensuring the application of art. 38, such as the competence of the Ambassadors to decide on the transfer to Spain, their lack of authority to decide on the admissibility of the asylum application, and the need to associate the risk of persecution to the country of origin, not to the country where the diplomatic mission is settled²⁶³.

A soft law instrument was also the centre of attention of a case related to ‘walls and fences’, in which the legality of the Operational Protocol on Border Surveillance of the Spanish *Guardia Civil* was the subject of the legal action in question. The National High Court dismissed the appeal because the Protocol, contrary to circulars and internal orders, could not be considered as a challengeable act, since it is not aimed at regulating the internal organisation of an organ, but just establishing criteria for *Guardia Civil* agents to impede irregular migration into Spanish territory. Only the implementing act, as administrative act, could be reviewable²⁶⁴.

Apart from national soft law, the Supreme Court also refers in its judgment in case 4353/2012 to an EU soft-law instrument, the European Parliament resolution of 5 February 2009 on the implementation in the EU of the Reception Conditions Directive 2003/9/EC²⁶⁵. The erroneous determination of the majority of age of the asylum applicant by Spanish authorities leads to proceedings which did not take into account his vulnerable condition as a minor (for instance, without a representative who assist him during the interview or confirming his waiver of legal counsel). As pointed out by the Supreme Court, this conflicts with the considerations set out in the European Parliament Resolution, which states that, where there is doubt as to a person’s age, the individual must be treated as a minor in accordance with the precautionary principle²⁶⁶.

²⁶⁰ Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del derecho de asilo y de la condición de refugiado, modificada por la Ley 9/1994, de 19 de mayo, BOE no. 52, 2 March 1995. As clarified by the Supreme Court in appeal no. 4989/2019, ES:TS:2020:3445, the repeal contained in Law 12/2009 refers to "any provisions of equal or lower rank that conflict with the provisions of this Law", which means, in accordance to art. 2.2 of the Spanish Civil Code, that, until a new regulation is adopted, the regulation developing the previous law remain in effect, as long as its does not conflict with the current one.

²⁶¹ Vígurín Cordero, J.A., “El derecho a la protección internacional en España: hacia una necesaria reforma legal”, *Revista Española de Derecho Europeo*, no. 77, enero-marzo 2021, pp. 67-98.

²⁶² *Carta circular a los embajadores españoles de 20 de noviembre de 2009*.

²⁶³ Supreme Court, judgment of 15 October 2020, appeal no. 4989/2019, ES:TS:2020:3445.

²⁶⁴ National High Court, judgment of 22 April 2015, appeal no. 13/2015, ECLI: ES:AN:2015:1707.

²⁶⁵ European Parliament resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 (2008/2235(INI)).

²⁶⁶ Supreme Court, judgment of 17 June 2013, appeal no. 4353/2012, ECLI:ES:TS:2013:3186.

UNHCR guidelines and instructions, instruments of soft law nature, are also referenced in Spanish case-law on asylum; however, these references can be found mainly in judicial decisions relating to asylum determination²⁶⁷.

E. Legal standing

In Spain, the legal remedies available to applicants for international protection to challenge barriers to access to asylum before the courts may be classified according to the different branches of the judiciary.

Criminal Jurisdiction

The criminal jurisdiction is responsible for adjudicating acts deemed to constitute criminal offences under the Spanish Criminal Code²⁶⁸. This jurisdiction will therefore encompass barriers to access asylum such as pushbacks, pullbacks and walls and fences, since these practices may result in deaths, injuries and similar consequences.

Criminal proceedings can be initiated through different means. First, criminally relevant events can be brought to the authorities' attention by means of a complaint, to be submitted to any judicial body, before any law enforcement officer, and before the Prosecutor's Office²⁶⁹. Complaints will lead to investigation proceedings, except when the reported act does not constitute a criminal offense or when the complaint is manifestly unfounded²⁷⁰. The alternative mechanism for initiating criminal proceedings is a lawsuit (*querella*). Lawsuits must comply with a set of formal requirements, be signed by a lawyer²⁷¹, and submitted to the competent judicial body for its adjudication²⁷². Aliens have the right to file lawsuits for criminal offences committed against their persons and property²⁷³. *Querellas* will also give rise to investigation proceedings and, ultimately, judicial proceedings, except when the reported act does not constitute a criminal offence, when the court lacks jurisdiction to adjudicate the matter, when the complaint has been filed by a person without legal capacity or legal standing, or when formal requirements have not been observed²⁷⁴.

Also, Spanish criminal Courts have jurisdiction to adjudicate on criminal offences committed on Spanish territory²⁷⁵, as well as certain offences committed abroad. In the latter case, Spanish Courts have jurisdiction if the offence was committed by a Spanish national and constitutes a criminal offence in the country where it occurred²⁷⁶; if it constitutes an offence affecting the fundamental interests of the Spanish State (such as treason or sedition)²⁷⁷; or if it falls within the scope of art. 23.4 of Spanish Organic Law on the Judiciary, which recognises the principle of universal jurisdiction for certain offences such as genocide.

Once criminal judicial proceedings have been initiated, two procedures may be followed: either the abbreviated procedure (*procedimiento abreviado*), if the offence carries a custodial sentence of up to nine years

²⁶⁷ See, for instance, National High Court, judgment of 22 February 2012, appeal no. 605/2010, ECLI:ES:AN:2012:759, which interprets the Geneva Convention and the Spanish law on asylum in light of the UNHCR Guidelines on International Protection No. 2: "Membership of a Particular Social group", 7 May 2002 (HCR/GIP/02/02).

²⁶⁸ Art. 9.3 of *Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*, BOE no. 157, 2 July 1985/ Spanish Organic Law 6/1985, of July 1st, on the Judiciary.

²⁶⁹ Arts. 259, 262 and 264 LECrim.

²⁷⁰ Art. 269 LECrim.

²⁷¹ Art. 277 LECrim.

²⁷² Art. 272 LECrim.

²⁷³ Art. 270 paragraph 2 LECrim

²⁷⁴ Arts. 313 and 277 LECrim

²⁷⁵ Art. 23.1 LECrim.

²⁷⁶ Art. 23.2 LOPJ.

²⁷⁷ Art. 23.3 LOPJ.

under the Spanish Criminal Code²⁷⁸; or the ordinary summary procedure (*procedimiento sumario ordinario*), if the custodial sentence exceeds nine years²⁷⁹.

Contentious-administrative Jurisdiction:

Access to the contentious-administrative jurisdiction requires the previous exhaustion of administrative remedies. Two different administrative remedies are generally available. First, non-final administrative decisions must be challenged by means of an *alzada* appeal, which shall be adjudicated by the higher administrative authority of the body that issued the contested resolution²⁸⁰. For example, return orders constitute non-final decisions that must be contested through an *alzada* appeal before judicial proceedings can be initiated.

Alternatively, if the challenged decision is final, individuals may optionally submit an administrative appeal for reconsideration (*recurso de reposición*), which is decided by the same body that adopted the contested act²⁸¹.

Finally, specific administrative remedies can be established under sector-specific laws. This is the case of the Spanish Asylum Act, which provides that decisions declaring inadmissible or rejecting applications submitted at border posts may be challenged through a *petición de reexamen*²⁸², its resolution putting an end to the administrative procedure²⁸³. With that exception, decisions adopted under the Spanish Asylum Act are final and may be challenged by means of an optional administrative appeal for reconsideration (*reposición*) and by lodging an appeal before the contentious-administrative jurisdiction²⁸⁴.

Once the administrative remedies have been exhausted (and taking into account that *reexamen* and the appeal of *reposición* are optional), judicial proceedings may be initiated before the contentious-administrative courts by filing an administrative lawsuit. Decisions regarding aliens that fall within the jurisdiction of the Contentious-administrative Courts and the Central Contentious-administrative Courts are processed through the abbreviated procedure²⁸⁵, which can only be initiated with a formal lawsuit²⁸⁶. All other appeals shall be processed through the ordinary procedure²⁸⁷.

There is another legal remedy that aliens can benefit from, namely the special procedure for the protection of fundamental rights²⁸⁸. Under this urgent and expedited procedure, the statement of claim (*escrito de interposición*) must be signed by a lawyer and specify the challenged administrative act as well as the fundamental right allegedly infringed. Jurisdiction is determined in accordance with the ordinary rules of the LJCA and, therefore, depends on the administrative authority responsible for the challenged act. This procedure may be initiated without prior exhaustion of administrative remedies and is subject to priority treatment. Conversely, only those matters concerning the alleged violation of fundamental rights can be addressed.

²⁷⁸ Art. 757 LECrim.

²⁷⁹ Art. 299 and following LECrim.

²⁸⁰ Art. 121.1 of *Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas*, BOE no. 236, 2 October 2015 / *Ley 39/2015, of 1 October, on Common Administrative Procedure of Public Administrations (LPACAP)*

²⁸¹ Art. 123.1 of LPACAP.

²⁸² Art. 21.4 of Spanish Asylum Act.

²⁸³ See art. 29 of Spanish Asylum Act.

²⁸⁴ *Ibid.*

²⁸⁵ Art. 78.1 LJCA.

²⁸⁶ Art. 78.2 LJCA.

²⁸⁷ Arts. 43 and *seq.* LJCA.

²⁸⁸ Arts. 114-121 LJCA.

Constitutional Court

Finally, barriers to access asylum may be challenged before the Constitutional Court through the *recurso de amparo*. This appeal seeks to protect individuals from violations of fundamental rights, specifically those rights set out in articles 14 to 29, and 30.2 of the Spanish Constitution²⁸⁹.

Strict requirements must be met to lodge an *amparo* appeal. First, prior judicial remedies must be exhausted, and the alleged violation of a fundamental right must have been invoked during those proceedings. For example, in administrative matters, the Constitutional Court has held that, in most cases, lodging a cassation appeal is a prerequisite for the admissibility of a subsequent *amparo* appeal²⁹⁰. Also, *amparo* appeals must demonstrate their constitutional relevance (“*especial trascendencia constitucional*”), meaning their significance for the interpretation and application of the Spanish Constitution²⁹¹.

Finally, laws and international agreements establishing barriers to access asylum may be questioned before the Constitutional Court by means of a constitutional challenge²⁹². This appeal can only be submitted by the Prime Minister, the Ombudsman, 50 deputies, or 50 senators²⁹³. Courts may also challenge laws and international agreements through a question of unconstitutionality (*cuestión de inconstitucionalidad*)²⁹⁴.

F. The influence of international Courts

CJEU case-law plays a very significant role in the examination of the legality of barriers to access asylum under Spanish jurisdiction. While sometimes including fewer references than might be expected or desirable, and occasionally making only more formal than substantive references, it is true that Spanish judicial decisions, particularly those issued in recent years, usually refer to CJEU case-law and do it in a substantive manner, by increasingly supporting judicial reasoning or grounding their argumentation in Luxembourg judgments, even leading to shifts in interpretation. The lack or deficient transposition by Spain of most of the asylum directives of the second stage of the CEAS leads Spanish courts to resort to guidance from the CJEU in the application and interpretation of EU secondary law in this field. The impact of CJEU case-law, as also indicated above, is nonetheless more visible in cases related to procedural barriers and to detention of asylum applicants than in pushbacks, pullbacks or other specific barriers.

Jurisprudence of supranational courts shaping procedural protections or interpretation

As already explained, CJEU case-law has had a very significant impact on Spanish judicial decisions specifically related to procedural barriers in access to asylum. The judgments issued by the Superior Court of Justice of Andalucía are relevant examples of this, since they reflect a shift in its case-law as a consequence of the interpretation given by the CJEU to the Procedures Directive 2013/32. The Superior Court of Justice decided in these cases that the suspension of the expulsion procedure, while the examination of the asylum request is pending, must be ordered from the moment the applicant manifests an intention to apply for asylum before any authority, including police officers, rather than from the lodging and registration of the application. This shift in its doctrine is expressly based in CJEU case-law in C-36/20 PPU together with the principle of direct effect of EU directives²⁹⁵.

Also in this regard, it is relevant to mention a judgment of the Supreme Court addressing the adoption of a precautionary measure aimed at extending the benefits enjoyed by an applicant during the processing of

²⁸⁹ Art. 41 of the Organic Law on the Constitutional Court, / *Ley Orgánica, de 3 de octubre, del Tribunal Constitucional*, BOE no. 239, 5 October 1979 (LOTC).

²⁹⁰ Order of the Constitutional Court of 18 June 2018, *amparo* appeal no. 5710/2017, ES:TC:2018:65A.

²⁹¹ Art. 49.1 LOTC.

²⁹² Arts. 27.1.a) to c) LOTC.

²⁹³ Art. 32 LOTC.

²⁹⁴ Art. 29.1.b) LOTC.

²⁹⁵ Superior Court of Justice of Andalucía of 22 March 2023, appeal no. 158/2022, ES:TSJAND:2023:6278 and of 3 July 2023, appeal no. 947/2021, ES:TSJAND:2023:16647.

his asylum application to the judicial proceedings challenging its rejection. The cassation appeal in this case was explicitly grounded by the appellant on art. 46.5 of the Procedures Directive, on the CJEU judgment in case C-181/16, *Gnandi*, and art. 15.3 of the Reception Conditions Directive, among other legal rules²⁹⁶. The Supreme Court supports its decision in CJEU case-law in *Gnandi*, which is extensively cited, and in C-818/18, *Commission v Hungary*. It concludes that we are faced with an authentic interpretation provided by the CJEU that leads to accept, as a result of the principle of consistent interpretation, that the precautionary measure should have been admitted and thus to extend the benefits the applicant provisionally enjoyed during the administrative procedure on asylum, including the right to reside and work in Spain. It is however striking to find no reference to ECtHR case-law in this and other subsequent judgments, taking into account that the Spanish government has issued a communication to the Committee of Ministers of the Council of Europe regarding the execution of ECtHR judgment *A.C. and others v Spain* (application 6528/11), noting how Supreme Court judgments, as this one, establishing case-law “avoids *per se* that any similar violation of the Convention, as found by the Court in *A.C. v Spain* judgment, can arrive again to the Court. The Spanish Government therefore considers that the jurisprudence reached by the Supreme Court on the automatic suspension of asylum applications implies a full compliance with the judgment of the European Court of Human Rights”²⁹⁷.

The right to free legal counsel for asylum applicants has also been strengthened by judicial action, however not specifically shaped by supranational case-law. The Supreme Court held in 2013 that deficient information on an applicant's rights, particularly the lack of information on the possibility to receive free legal assistance, could lead to a real and effective situation of defencelessness, aggravated in the case of foreigners who do not know the Spanish language and legislation, and could have an invalidating impact on administrative action²⁹⁸.

G. Comparative insights

Divergences among judicial bodies

With regard to pushbacks, a slight divergence between the respective positions of the Constitutional Court and the Supreme Court could be identified in the two cases analysed below as “leading decisions”, the former accepting the constitutionality of the legislative provision formalising the practice of summary pushbacks at the Spanish-Moroccan border in Ceuta and Melilla, while the latter boldly declaring the return of minors from Melilla to Morocco without following any administrative procedure as a collective expulsion prohibited by art. 4 of Protocol 4 to the ECHR. It might be observed that the Constitutional Court delivered its judgment against a background of political pressure surrounding the special regime of Ceuta and Melilla and, perhaps influenced by that context, decided to declare its “conditional constitutionality” by which summary pushbacks are accepted provided, however, these apply to individualized entries, that international obligations on human rights are respected, and judicial control applies. This could reduce the distance between the Constitutional Court and the Supreme Court as regards the substance of the issue, but the truth is that the Constitutional Court’s conditions are unfeasible in practice if the rejection at the border is to be qualified as a special form of mandatory exit, distinct from the *devolución* or the expulsion orders subject to legal safeguards foreseen in Spanish legislation.

²⁹⁶ Supreme Court, judgment of 29 November 2022, appeal no. 1314/2022.

²⁹⁷ Communication from the authorities (16/09/2024) concerning the case of A.C. AND OTHERS v. Spain (Application No. 6528/11) (appendices in Spanish are available at the Secretariat upon request). Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, DH-DD(2024)1051, 17 September 2024.

²⁹⁸ Supreme Court, 17 June 2013, appeal no. 4353/2012, ECLI:ES:TS:2013:3186. This case is also relevant for acknowledging how an erroneous determination of the majority of age of the applicant when the asylum request was lodged impeded the application of cautions and safeguards foreseen in Spanish legislation regarding the protection of minors. See Defensor del Pueblo, *Estudio del asilo en España*, 2016, https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Asilo_en_Espa%C3%B1a_2016.pdf

Although the reasoning of the Supreme Court in the case of the return of minors to Morocco might have been further supported by reference to EU legislation, CJEU case-law and ECtHR jurisprudence (for instance, on the contours of collective expulsions), its judgment of January 2024 is clear and straightforward and, unlike the Constitutional Court judgment, expressly finds that the pushback practice by Spanish authorities is opposed to the legal order.

The judgment by the Superior Court of Justice of Andalucía of 24 March 2025 declaring that rejections at sea cannot be incardinated under the 10th Additional Provision to Organic Law 4/2000, since that provision only applies to the land border and an extensive interpretation of the Constitutional Court position in its judgment of 19 November 2020 would not be adequate, constitutes, in my view, an implicit rejection of the Constitutional Court's stance on pushbacks²⁹⁹.

Some divergences can also be identified between the National High Court and the Supreme Court on the calculation of deadlines regarding applications submitted at CIEs, which are based on a different interpretation of the situation in which an applicant is found at these centres as opposed to applicants at the border. However, these and other divergences between the National High Court and the Supreme Court in asylum access adjudication are ultimately resolved through the National High Court's adherence to Supreme Court case-law.

For this purpose, it may be important to note that attributing judicial competence on asylum issues to a central court, such as the National High Court, may prevent a higher degree of divergence than that more easily found in immigration matters, which fall within the decentralized judicial powers of the provincial Contentious-administrative Courts and the Superior Courts of Justice of each autonomous community. Nonetheless, this does not necessarily avoid slight divergences among different sections of the National High Court dealing with asylum cases, as will be explained below in relation, for instance, to its stance on the assessment of precautionary measures requested for the extension of asylum applicants' benefits pending the examination of judicial actions against asylum rejections.

Divergences between national courts and supranational rulings

Divergences between the CJEU interpretation and prior Spanish judicial decisions can be identified, for instance, in relation to the recognition of the status of an asylum applicant from the very moment the intention to request asylum is expressed and the effects of that manifestation before any authorities, even if these are not competent to receive and formalize an asylum application³⁰⁰. Those divergences also concern the moment from which the individual is entitled to the rights and benefits associated with the status of asylum applicant. In my view, these past divergences result from the lack of implementation in Spain of EU Directives of the second stage of the CEAS and the strict interpretation adopted by national courts on the provisions of the Spanish law on asylum. As explained above, subsequent case-law has progressively aligned the interpretation of Spanish courts with that of the CJEU.

Also, it is remarkable that national judicial decisions applying the concepts of safe third country and safe country of origin do not apply CJEU case-law more extensively. In general terms, judicial reasoning in these cases is often based on a factual and superficial analysis of the case to check whether the legal conditions for applying those concepts are fulfilled³⁰¹. Certain judgments undertake a more rights-sensitive approach and include references to CJEU case-law, albeit engaging with it only to a limited extent³⁰².

²⁹⁹ Judgment of the Superior Court of Justice of Andalucía, 24 March 2025, appeal no. 823/2024, ES:TSJAND:2025:6216.

³⁰⁰ Case *VL/Ministerio Fiscal*, C-36/20 PPU.

³⁰¹ See, for instance, National High Court, judgment of 17 October 2016, appeal no. 165/2016, ES:AN:2016:3838 and judgment of 31 October 2016, appeal no. 692/2015, ES:AN:2016:4076. In the latter, the Court only mentions that the CJEU has established how the ratification of international conventions by the State cannot lead to an irrefutable presumption of safety.

³⁰² See an example in National High Court, judgement of 2 February 2018, appeal no. 397/2017, ECLI:ES:AN:2018:428. See also National High Court, judgement of 4 February 2022, appeal no. 2328/2019, ECLI: ES:AN:2022:437, including no references at all.

Broader principles established by international bodies

In general terms, Spanish case-law aligns with the international fundamental principles governing the right to asylum, notably the principle of *non-refoulement* and the right to an effective remedy. The Constitutional Court's judgment of 19 November 2020, in case 2895/2015, might however raise certain tensions in light of those principles, as ensuring the right to asylum, the principle of *non-refoulement*, and the protection of vulnerable persons may be difficult to reconcile with the practice of rejections at the border without following an administrative procedure capable of identifying those needs.

Recent recommendations by UNHCR on international protection in Spain focus on the need to improve access to asylum, in general terms and particularly in Ceuta and Melilla, as well as regarding unaccompanied minors. Its recommendations are mainly directed to the Spanish administration, without special references being made to judicial decisions³⁰³.

Moreover, regarding the role of UNCHR reports during asylum adjudication examined above, it should be highlighted that Spanish case-law accords considerable value to UNCHR's criteria. In a judgment of April 2025, the Supreme Court held that it must be proven by any legally admissible means that the Administration notified UNHCR of the submission of an application for international protection and that the agency was able to take note of it in a timely manner, thus enabling the effective exercise of the important functions legally entrusted to UNHCR by Spanish legislation on asylum³⁰⁴. In previous cases, the Supreme Court had upheld appeals and invalidated administrative decisions issued in asylum procedures in which the UNCHR was not informed of the submission of the application and there was no evidence that the Commissioner had been effectively summoned to the session of the Interministerial Commission on Asylum and Refuge (CIAR) deciding on the application³⁰⁵. In the 2025 judgment, the Supreme Court also highlights that the resolution proposal formulated by the CIAR must take note how the latter met with the assistance of all its members and the UNHCR. In sum, the Supreme Court, more generally, refers to the "extraordinary importance of UNHCR's participation in asylum procedures, as well as the need to be informed of the submission of the application for international protection and to be summoned to the CIAR meeting in which that application is examined"³⁰⁶.

Best practices or lessons learned from the adjudication of asylum barriers

Judicial decisions, particularly by the Supreme Court, that limit the powers of the Executive regarding migration controls and the arbitrariness in the exercise of State sovereignty over entry, residence and exit of foreigners may be identified as a good practice. This can be observed in the Supreme Court case-law regarding the interpretation of art. 38 of Law 12/2009 on transfers from Spanish diplomatic missions to Spanish territory in order to make the lodging of an asylum application possible; or in the Supreme Court cases rendered in 2024 rejecting, as illegal, the collective return of minors to Morocco undertaken in direct execution of a bilateral agreement between the two countries and without following any other formalities or procedure ensuring their rights.

Likewise, Spanish judicial decisions ensuring an interpretation of national legislation on asylum and immigration consistent with EU directives and CJEU case-law and leading to ensure the direct effect of those directives allow the judiciary to overcome the deficient implementation by the Spanish government and legislator of EU secondary law. This could be qualified as a good practice, which represents nonetheless the fulfilment of the obligations of national judges as ordinary judges of EU law.

³⁰³ UNHCR, Submission for the Office of the High Commissioner for Human Rights' Compilation Report, Universal Periodic Review: Fourth Cycle, 49th Session, Kingdom of Spain, October 2024, https://www.refworld.org/search?sm_country_name%5B%5D=Spain&sort=score&order=desc

³⁰⁴ Supreme Court, judgment of 4 April 2025, appeal no. 1373/2023, ES:TS:2025:1573.

³⁰⁵ Supreme Court, judgment of 29 April 2011, appeal no. 2530/2009, ES:TS:2011:2331.

³⁰⁶ Supreme Court, judgment of 4 April 2025 (own translation).

H. Role of expert testimony

Spanish judicial decisions do not appear to rely on expert testimony, either in their legal reasoning or in their outcomes, as far as the barriers to access to asylum examined within this Project are concerned.

In cases in which age determination is at issue, however, references to medical expert evidence can be found. For instance, in case 4353/2012, reference is made to the radiological report issued by a doctor at La Paz Hospital (Madrid) regarding the test for age determination of the applicant and to how the imprecision of the Greulich and Pyle method meant that it could not be regarded as conclusive for this purpose, as explained in the reasoned case-law of the Superior Court of Justice of Madrid. According to that case-law, it is merely a predictive method, based on reference standards derived from white children in the United States and Europe, whereas the report concluded that the test corresponded to a “typical” age of 19 years without taking into account the social, cultural, nutritional and environmental characteristics influencing the physical and psychological development of a person³⁰⁷. This assessment was relevant in the present case because the uncertainty surrounding the applicant’s age directly affected the procedural safeguards applicable to an unaccompanied minor seeking international protection, including the right to legal assistance.

I. Future Directions

Emerging trends or evolving issues in asylum law

Spanish case-law might be influenced in the short to medium term by the new EU legislation approved by the European Parliament and the Council in the summer of 2024 as the normative expression of the New Pact on Migration and Asylum, proposed by the European Commission in September 2020. The regulations forming this legislative package and certainly affecting the right to asylum in EU Member States, such as the Regulation on the screening of third-country nationals at the external borders, the Regulation on a common procedure for international protection, the Regulation on qualification or the revised Directive on reception conditions, will be applicable as of June 2026 and will have greater normative intensity than previous directives on asylum, leaving in certain aspects less margin for Member States’ discretion in their implementation. Consequently, Spanish practice will be clearly influenced, and future CJEU case-law will interpret the new legislative provisions and their mutual interactions. Spanish case-law will therefore, most probably, be affected as well. It should be recalled that Spain had not correctly implemented the EU asylum directives of the second stage of the CEAS; although the new regulations will be directly applicable in Spain, transposition will still be necessary regarding the amended Reception Conditions Directive. The two-year period between the entry into force and the applicability of the Regulations also confirms the need for adaptations and adjustments to the legal, administrative and operational frameworks of the Member States, as reflected in the Regulation on Asylum and Migration Management, which requires both national and Union implementation plans to facilitate the application of the new Pact³⁰⁸.

Also, on 20 May 2025, the new Immigration Regulation, Royal Decree 1155/2024 implementing Organic Law 4/2000 mentioned above, entered into force, but its main novelties do not *a priori* affect the issues related to access to asylum examined here³⁰⁹. Nonetheless, a relevant novelty is that the time during which

³⁰⁷ Supreme Court, judgment of 17 June 2013, appeal no. 4353/2012, ECLI:ES:TS:2013:3186.

³⁰⁸ Art. 84.3 of Regulation (EU) 2024/1351 of the European Parliament and of the Council, of 14 May 2024, on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, OJ L2024/1351, 22 May 2024.

³⁰⁹ A relevant novelty is that the time a person spends as an applicant for international protection no longer counts toward residence permits based on established ties (Spanish institution of “*arraigo*”). Only the time spent after a final administrative or judicial rejection of the asylum application will be taken into account, limiting the regularization operation of asylum applicants: ACCEM, 20 May 2025, <https://www.accem.es/guia-para-entender-el-nuevo-reglamento-de-extranjeria-2024/>. A challenge before the Supreme Court has been introduced by several organisations whose claims include this issue, as they understand this

a person is an applicant for international protection no longer counts toward residence permits based on established ties (the Spanish institution of “*arraigo*”). Only the time spent following a final administrative or judicial rejection of the asylum application will be taken into account, thereby limiting the possibility of regularization for asylum applicants³¹⁰.

Proposals to amend or adopt certain legal provisions of relevance to the barriers considered in this project (on transfer into Spain by diplomatic missions in order to apply for international protection, or on the special regime applicable to Ceuta and Melilla) are pending before the Spanish parliament. However, the current political situation, including the Government's parliamentary fragility and the impact of ongoing corruption investigations, makes it very difficult to foresee the adoption of amendments or future legislation on migration and asylum.

II. IDENTIFICATION OF LEADING DECISIONS

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ES:TC:2020:172.*
2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ES:TS:2024:114.*

Pullbacks:

3. Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ES:TS:2010:833.

Walls and fences:

4. *Case on the ‘massive assaults’ to Melilla border fences in 2014: Court of First Instance and Investigation/Juzgado de Primera Instancia e Instrucción no 2 of Melilla, Order of 11 September 2014, appeal no 866/2014, ES:JPII:2014:14A; Provincial Court/Audiencia Provincial of Melilla, Order of 7 April 2015, appeal no 437/2014, ES:APML:2015:1A; Court of First Instance and Investigation/Juzgado de Primera Instancia e Instrucción no 2 of Melilla, Order of 11 August 2015, appeal no 866/2014, as well as ECHR Decision of 24 June 2021, application no. 19420/15, *Doumbe Nnabuchi v. Spain*.*

Detention:

5. *Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ES:TS:2019:4071.*

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ES:TS:2021:4935.*
7. *Order of Investigating Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019.*

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (cassation appeal), 15 October 2020, ECLI:ES:TS:2020:3445.*

goes against the Geneva Convention and the Procedures Directive, reason why they have asked the Supreme Court to raise a preliminary reference to the CJEU.

³¹⁰ ACCEM, 20 May 2025, <https://www.accem.es/guia-para-entender-el-nuevo-reglamento-de-extranjeria-2024/>. A challenge before the Supreme Court has been introduced by several organisations whose claims include this issue, as they argue this goes against the Geneva Convention and the Procedures Directive, reason why they have asked the Supreme Court to submit a preliminary reference to the CJEU.

A. Description of the barriers in the selected decisions

Formality or informality of the barrier

Pushbacks:

1. *Constitutional Court, constitutional challenge 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172*: the barrier addressed in this case is formally established since it relates to the formalisation in law of the practice of hot expulsions or pushbacks at the Spanish-Moroccan border in Ceuta and Melilla. The judgment replies to the constitutional challenge regarding the conformity with the Spanish Constitution of the final additional provision of the Organic Law 4/2015 on the Protection of Citizen Security, adding a tenth additional provision to the Organic Law on Aliens and providing for a special regime for Ceuta and Melilla which formalises hot expulsions or “rejections at the border” to be applied to persons trying to irregularly cross the border fence system at the Spanish-Moroccan border.

The actors involved in the establishment of this barrier include, on the one hand, the Spanish parliament which approved this organic law by absolute majority on 30 March 2015, and, on the other hand, the Spanish State security forces, in particular the *Guardia Civil*, in charge of border surveillance, and the National Police, in charge of entry/exit controls of the territory. Moroccan agents also take part indirectly in this pushback practice, as the Spanish authorities hand over to them, without any procedure or legal safeguard, the individuals who attempt to irregularly cross the border.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114*

The barrier addressed in this case was informally established through a *de facto* administrative action through which Spanish public authorities met with Moroccan public agents at the border zone between both countries in Ceuta and agreed and executed the return of a high number of minors, by groups during the month of August 2021, without following any administrative procedure beyond taking their names³¹¹. The returned minors had entered into Spain three months before, through a massive crossing involving around 12,000 persons, of which around 1,500 were minors. This summary expulsion was implemented allegedly in the execution of the Spain-Morocco Agreement on cooperation for the prevention of the illegal emigration of unaccompanied minors, their protection and concerted return of 2007³¹².

The actors involved in the establishment of the barrier were the authorities governing the Autonomous City of Ceuta, competent in the provision of social assistance to unaccompanied minors and which accommodated, without undertaking any identification procedure, the minors who entered in Spanish territory in some industrial warehouses, and then in a local sports centre; the Delegation of the central Government in Ceuta, which decided on the return of the minors; as well as the public agents from Spain and Morocco who met at the border zone to agree on the return of minors, implemented without following any administrative procedure and without applying any legal safeguard associated to their return.

Pullbacks:

3. *Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833*:

³¹¹ Apparently the repatriations took place on the 13, 14 and 15 August 2021, while on the 16th several minors to be repatriated invoked an *habeas corpus* against their illegal detention, leading to only 45 returns completed out of the 155 that were planned: El Diario.es, “Las claves del juicio de la devolución ilegal de menores marroquíes a Ceuta: de los avisos ignorados a la orden sin firmar”, 20 June 2025, https://www.eldiario.es/desalambre/juicio-devolucion-ilegal-menores-ceuta-marruecos-avisos-ignorados-orden-firmar_1_12402661.html

³¹² Acuerdo entre el Reino de España y el Reino de Marruecos sobre la cooperación en el ámbito de la prevención de la emigración ilegal de menores no acompañados, su protección y su retorno concertado, hecho en Rabat el 6 de marzo de 2007, BOE no. 70, 22 March 2013.

According to the National High Court, later confirmed by the Supreme Court, there was not a barrier in this case. The material action of the Spanish State consisted in an action of rescue at sea, implemented as a duty of humanitarian assistance under Spanish international obligations. According to the Supreme Court, it is not up to the Court to adjudicate whether there was international legal coverage for those actions (whether they were necessary, adequate and proportionate according to international law), but only to decide whether a violation of fundamental rights derived from it. The action by Spanish authorities is to be qualified as a *de facto* administrative action (*‘vía de hecho’*).

A bilateral agreement was signed between Spain and Mauritania to address the situation created by the rescue of the ship *Marine I*. In that sense, the barrier was formalised through the agreement, which granted an exceptional authorization for a Spanish ship to tow the rescued ship to a Mauritanian port, and under which Spain undertook to provide a sufficient number of aircrafts to evacuate all the passengers of the ship regardless of their nationality.

The actors involved in the barrier are the Spanish Ministers and State Secretaries for Interior and Foreign Affairs and Cooperation, who adopted the decisions taken with regard to the ship *Marine I* and the fate of the persons onboard (369 persons disembarked in Mauritania and were later repatriated or transferred to different countries; including 23 persons who refused to be repatriated and remained in Mauritania when the legal action was initiated). The rescue and disembarkation in the port of Nouadhibou was carried out by the Spanish tugboat *Luz de Mar* of State Maritime Rescue. 1,130 Spanish police officers were sent to Mauritania to manage the situation and organize the repatriation process in cooperation with the Mauritanian authorities.

Walls and fences:

4. *Case on the ‘massive assaults’ to Melilla border fences in 2014*

The barrier identified in this case related to the “operational concept of border” managed by the Spanish government at the border fence system in the autonomous cities of Ceuta and Melilla. Although this concept has been used by the Government from the very construction of the fence system in 2005, it was formally established through an Operational Protocol on Border Surveillance, of 26 February 2014, and an Order of Services n° 6/2014 on an Anti-intrusion device on the perimeter fence of Melilla³¹³, documents whose content, publicly unavailable, is precisely displayed in the Order of the Melilla Court of First Instance and Investigation of 11 September 2014.

According to the Government, the internal fence of the border system materializes the line delimiting the national territory for the sole purposes of immigration legislation. Thus, illegal entry attempts that are stopped by the agents responsible for border surveillance do not result in actual illegal entry, which only becomes consummated when migrants cross the internal fence, point at which they become subject to Spanish aliens legislation. The Provincial Court, in its Order of 7 April 2014, considers this operational concept to be built on a fictional border, which creates a situation not foreseen under national and international legislation; a controversial but not forbidden concept, clearly restrictive of migrants’ rights. However, according to the Court, this definition of border is not arbitrary or illogical, but fits in the nature and purpose of border control at which the fence system is aimed; it corresponds to the exclusive powers of the State on the admission of aliens according to the principle of territorial sovereignty; and it fits within the context of the EU policy against illegal immigration, moving within a difficult balance, for States, between the right to reject third-country nationals who do not fulfil entry conditions, on the one hand, and their asylum obligations under international and EU law, on the other.

³¹³ *Protocolo Operativo de Vigilancia de Fronteras, de 26 de febrero de 2014, and Orden de Servicios n° 6/2014 sobre Dispositivo Anti-Intrusión en la valla perimetral de Melilla.*

These orders - adopted by the *Guardia Civil* who is responsible for the surveillance and custody of borders, coasts, ports and airports³¹⁴ - are qualified as illegal by the Provincial Court, since they completely disregard the legal procedures provided for expulsion, return or *devolución*, while ignoring the guarantees applicable to migrants, namely legal assistance, right to an interpreter, and right to an effective remedy, and severely depriving or limiting the right to seek asylum. However, they do not constitute a gross intentional violation of the legal order, thus they are unable to attain the threshold of the criminal offence of prevarication charged to the Colonel Chief of the Melilla *Guardia Civil* Command.

Detention:

5. *Case on the 'massive assaults' to Melilla border fences in 2014*

The barrier identified in this case refers to the exceeding of the deadline for processing the asylum requests when formalized at Immigration Detention Centres, CIEs, and, therefore, the excessive detention time applied to the applicant. This barrier has been informally established, as it comes from an incorrect interpretation or understanding of the applicable legal provision. Art. 25 of the Spanish Law 12/2009 on asylum and subsidiary protection indicates, when dealing with applications for international protection submitted at Immigration Detention Centres, that their processing must comply with the provisions of art. 21 on applications at the border. Under the latter, the Minister of Interior may declare inadmissible or reject the application within a maximum period of four days from its submission. Most importantly, exceeding this time-limit will determine the application of the ordinary procedure, as well as the authorization of entry and provisional stay of the applicant. According to the Supreme Court's doctrine, the calculation of this time limit must be made by hours, from moment to moment, starting at the precise time of submission of the application, and not by days and excluding public holidays, as it is usual in administrative law. The Administration, in particular the Minister of Interior, which is the actor involved in the establishment of the barrier, does not respect art. 21 in dealing with asylum requests submitted at Immigration Detention Centres and does not apply the doctrine on calculating time-limits for requests at the border to requests made from a CIE, arguing that stays at the border respond to a very special situation in which the applicant, while the decision is being made, will remain retained in the designated facilities without the intervention of any judge. However, in the case of persons detained at a CIE, the applicant is deprived of his freedom by a court decision, adopted taking into account the circumstances of the case such as the risk of absconding; this detention, which can be extended up to 60 days, does not present the extreme urgency typical of those implemented at border posts.

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.*

The barrier relates to the effects of the submission of an asylum request on the suspension of administrative procedures leading to the repatriation of the individual (either expulsion, return or *devolución* as foreseen in Spanish legislation on aliens). More particularly, as a result of the uncertain interpretation to accord to the relevant provisions of the legislation on asylum and on aliens, the asylum request was leading, in practice, to the suspension, by the Administration, of the execution of those expulsion-related measures, without however paralyzing the processing of the respective procedures of adoption.

The actors involved in their establishment are the authorities in charge of processing the orders or resolutions of expulsion, return and *devolución*, foreseen in the Organic Law 4/2000 on aliens, which are the Subdelegate of Government or the Delegate of Government in single-provincial autonomous communities, the National Police being competent to instruct the procedure and execute the resolution.

³¹⁴ Art. 12 A and B of the Spanish Organic Law 2/1986 on the Corps and Forces of State Security / *Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad*, BOE no. 63, 14 March 1986.

7. [Procedural barrier/Detention] *Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019.*

The barrier relates to the concept of authorities who can receive an application for international protection and the effect that expressing the intention to request asylum produces in decisions ordering the detention of asylum seekers or their expulsion. In particular, the Spanish administration has been following a formalistic interpretation of the submission of an asylum request whereby only the national police is competent to receive and register an application. The barrier could be considered to have been informally established since, according to the judicial body, the integration and consistent interpretation of national law in light of EU law are able to discard this barrier to access asylum.

The actors involved in the barrier are national police agents instructing orders of *devolución* and expulsion, the Subdelegates and Delegates of the central government, competent to adopt those orders, and the Ministry of Interior, competent to decide on the granting of international protection.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445.*

The barrier consists in the lack of enforcement, or limited application, of art. 38 of Spanish Law 12/2009 on Asylum and Subsidiary Protection, which provides the transfer, by Spanish embassies and consulates, of applicants for international protection into Spanish territory so that they can submit there their application. This barrier could be said to be, according to the judicial body, informally established, since the legal provision in question could be applied in spite of the lack of its specific normative development. However, the Spanish administration seems to argue that the barrier is formally established, the lack of normative development of art. 38 meaning there is not administrative procedure in force that allows for the application of that provision.

The actors involved in the establishment of the barrier are Spanish diplomatic and consular missions abroad (particularly in this case the Spanish embassy in Greece) who are competent to decide on the transfer into Spanish territory; the Spanish Ministry of Foreign Affairs and Cooperation who is in charge of authorizing the issuance of the laissez-passer, and the Spanish Office of Asylum and Refuge (OAR) of the Ministry of Interior who shall favourably report on that authorization.

Administrative obstacles faced by the applicant(s)

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

The applicants in this case were 114 members of the Spanish parliament, belonging to different political groups. They did not face any administrative obstacles in the adjudication process.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114*

The applicants in this case were the association *Coordinadora de Barrios para el Seguimiento de Menores y Jóvenes* and eight unaccompanied minors who denounced the violation of their fundamental rights by the *de facto* administrative action by the Spanish administration. Eventual obstacles may relate to the repatriation of the minors to Morocco and the preparation of their legal defence, but they are not specifically addressed in the judicial decisions, besides the issues related to their legal standing.

Pullbacks:

3. *Marine I*, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:

The persons onboard the ship *Marine I* were disembarked in Mauritania, where they were held in arbitrary detention and degrading conditions in Nouadhibou's port facilities. The operation agreed between Spain and Mauritania to solve the situation arranged the provision of health assistance to migrants and their repatriation; there is no information about the processing of asylum applications, although UNHCR staff took part in interviews.

The applicant in the case, CEAR, the Spanish Commission for Refugee Assistance (*Comisión Española de Ayuda al Refugiado*), argued that rescued migrants were not allowed to disembark in Spain but brought to a foreign port, so that it could not be verified according to instruments established in Spanish legislation on asylum whether they wished to request asylum.

Walls and fences:

4. *Case on the 'massive assaults' to Melilla border fences in 2014*

Regarding the criminal offences of injuries -art. 147 and 148 of the Spanish Criminal Code- and degrading treatment -art. 173 and 176 of the Spanish Criminal Code-, the Melilla Court of First Instance and Preliminary Investigation shows the impact that pushbacks at the border fence have on the investigation of those criminal offences charged to the *Guardia Civil* agents participating in the events of 18 June, 13 August, and 15 October 2014. As stated by the Court, the fact that the foreign nationals who entered Melilla on those dates were not properly identified and were immediately handed over to the Moroccan authorities without any formalities makes it impossible to carry out essential investigation procedures. It was not possible to take statements from them as injured parties, nor to conduct a forensic examination of the injuries that would have allowed an assessment of the nature, extent and causality of those injuries or regarding eventual degrading treatment. In case of need, they were thus unable to request asylum.

Detention:

5. *Supreme Court*, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:

It does not appear from the case that special administrative obstacles were faced by the applicant. The applicant was an Algerian national who requested asylum on 13 September 2017 while detained in an Immigration Detention Centre. The UNCHR filed a positive report favourable to the admissibility of his request, which was based on the homosexual condition of the applicant and the situation of homosexuals in his country of origin. A resolution rejecting the request was adopted on 19 September. A request for reconsideration (*reexamen*) was filed and also rejected by the Ministry of Interior on 21 September, against which the contentious-administrative legal action was introduced by the applicant.

Procedural barriers:

6. *Supreme Court*, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.

The case does not provide relevant information on specific administrative challenges faced by the applicant, a Peruvian woman against whom an expulsion order was adopted after she had been found to be irregularly present in Spanish territory. The expulsion procedure was initiated on 10 December 2019;

she requested asylum on 9 January 2020, after the expulsion proposal had been issued but before the expulsion order was finally adopted on 13 January 2020.

7. *[Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

The applicant is a Malian national, who travelled in a dinghy with 45 people of Sub-Saharan origin, intercepted by a Spanish Maritime Rescue ship and disembarked in the Canary Islands. The day after, an order of *devolución* was adopted against him, asking for his admission into an Immigration Detention Centre (CIE in Spain) as repatriation could not be implemented in 72 hours. It is not until the applicant appears before the judge in charge of deciding about his detention that he is assisted by a lawyer and by an interpreter on Bambara language, and that he was able to ask for asylum. Under a strict reading of Spanish law, the judge was not competent to receive this application for international protection, but the judge in this case decided to communicate it to the National Police and ask for the registration of his application. The limited places of first reception for asylum seekers and humanitarian assistance led the Court to decree nevertheless his internment into a CIE.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445.*

According to the factual description of the case in the judgment, the applicants endured a complicate process in order to access international protection, from the initial requests made both before the Greek Administration and the Spanish Embassy in Greece, the transfer of the wife and their two sons to Spain, as well as the separation of the family since the husband was not allowed to move to Spain and remained in Greece. The situation was complicated by the fact that Greece decided to reject the husband's application for international protection in favour of Spain on the basis of the Dublin Regulation, that this decision was later revoked by Greece, which assumed its responsibility to examine his application, and that he was informed, within that same decision, that a criminal procedure was initiated against him by the Thessaloniki Prosecutor's Office (no further information on this procedure is later communicated to the applicant).

Challenges related to their legal standing or capacity

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

No challenges regarding the legal standing of the applicants were raised.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114*

The Delegation of the central Government in Ceuta invoked, as inadmissibility grounds of the appeal, the lack of certification of the identity of the minors, who could be different from those affected by the measures in question and the lack of capacity of the minors to appear in court, as well as the default in their judicial representation due to the insufficient legal counsel representation regarding provisional measures. The government of Ceuta also rejected the inadmissibility of the legal action as far as the association *Coordinadora de Barrios* is concerned, since its fundamental rights would not have been infringed. It argues on the lack of evidence of the hypothetical situation of helplessness in which the minors have been left after their return to Morocco.

The Superior Court of Justice confirms the extensive active legal standing of the association, whose statutory purposes include the defence and protection of MENAs (*menores extranjeros no acompañados*/foreign unaccompanied minors) and thus the defence of their collective legitimate interests. Its legal standing, which is thus qualified as being close to mere defence of legality, extends to the 55 effectively repatriated minors and particularly to the eight minors whose judicial defence the association assumed.

Pullbacks:

3. *Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:*

The applicant was CEAR, the Spanish Commission for Refugee Assistance, an organisation aimed at providing direct and integral assistance to refugees on hosting, labour inclusion, psycho-social attention, legal counsel, and denunciation. No issues regarding its legal standing were raised.

Walls and fences:

4. *Case on the 'massive assaults' to Melilla border fences in 2014*

The judicial procedures were initiated through criminal complaints by NGOs and other organisations in defence of migrants' rights (*Federación Andalucía Acoge, Federación de Asociaciones SOS Racismo del Estado español* and PRODEIN) and not by the migrants involved in the events, as they had been immediately handed over to the Moroccan authorities at the border fence without any formalities.

In case *Doumbe Nnabuchi v Spain*, which is precisely related to the assault of 15.10.2014 to the Melilla border fence, the ECtHR declared inadmissible the application against the pushback actions of Spain, as the applicant had not provided *prima facie* evidence of his participation in the events (his identity and his identification in the video footages of the assaults to the fence were not clear and medical records of his injuries were lacking). Also, the applicant did not appear before the Spanish courts despite being represented by legal counsel who acted in the criminal proceedings referred to above.

Detention:

5. *Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:*

No challenges regarding the legal standing of the applicants were raised.

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.*

The applicant is a woman of Peruvian nationality, against whom an expulsion resolution is adopted on the basis of her irregular stay in Spanish territory. Between the adoption of the expulsion proposal and the resolution itself, the applicant lodged an international protection request. The case does not provide information on eventual challenges faced by the applicant as regards her legal standing.

7. *[Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

Within the procedure to decide on his internment, the judge agreed to receive the declaration of the applicant and instruct him about his rights. He was therefore assisted by a lawyer and an interpreter.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445.*

No challenges regarding the legal standing of the applicants were raised.

Hearing

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172:*

No oral hearing applied in this constitutionality challenge.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114:*

A public hearing was convened as the subject matter of the case rendered it necessary in accordance with art. 92.6 of the Spanish Law on Contentious-administrative Jurisdiction. It was held on 16 January 2024.

Pullbacks:

3. *Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:*

There is no indication in the case of the applicant being heard by the judicial bodies (neither by the National High Court, nor by the Supreme Court).

Walls and fences:

4. *Case on the 'massive assaults' to Melilla border fences in summer/autumn 2014*

There is no information in the national judgements about whether the applicants were heard orally. Among the evidence produced by the applicants, video footage of the events at the Melilla border fence were presented and considered by the Spanish courts as evidence of how members of the Spanish *Guardia Civil* handed several Sub-Saharan migrants to Moroccan agents through the gates at the internal fence and through the next gate in the area between the fences; they were handcuffed and with visible signs of injuries. These videos also show how some migrants allegedly managed to surpass the entire border perimeter, crossing the inner fence and entering Spanish territory.

Detention:

5. *Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:*

The case was decided without holding an oral hearing.

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.*

The case was decided without holding an oral hearing.

7. *[Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

The applicant was heard, in person, by the judge of the Preliminary Investigating Court within the procedure to decree his internment in an Immigration Detention Centre (CIE).

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

No oral hearing was decreed in this case.

Legal aid

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172:*

There is no information on the provision of legal aid to the applicants.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114:*

The applicant, CEAR, was assisted by legal counsel in the case, who also acted as judicial defence of the applicant minors.

Pullbacks:

3. *Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:*

There is no information about the provision of legal aid to the organisation who acted as applicant, CEAR in this case.

Walls and fences:

4. *Case on the 'massive assaults' to Melilla border fences in summer/ autumn 2014*

The organisations who acted as applicants were assisted by legal counsel in the case.

Detention:

5. *Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:*

There is no information as regards the provision of legal aid to the applicant. He was assisted by a court agent (*procurador*).

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.*

The applicant was assisted by legal counsel in this case.

7. *[Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

The applicant was assisted by legal counsel. There is no information however on free legal aid being provided, although there are indications in the Order of the lack of means of livelihood.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

The applicants were assisted by legal counsel.

Applicant's vulnerability

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

No vulnerability conditions were at stake in this case.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114:*

The applicants were unaccompanied minors of unknown nationalities who were returned to Morocco without any formalities or safeguards three months after their irregular entry into Spain through a massive crossing at the border in Ceuta, where they were accommodated under the custody of the autonomous authorities in industrial warehouses and local sports centres. Their special vulnerability is not being specifically mentioned in the judicial decisions as an element impacting on the adjudication process.

When the Superior Court of Justice appreciated the violation of the right to physical and moral integrity based on the absence of any administrative procedure, the lack of formal and material audience of the minors with the purpose of confirming the convenience of their repatriation and thus the satisfaction of the best interest of the child was highlighted.

Pullbacks:

3. *Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:*

No vulnerability conditions were raised in this case.

Walls and fences:

4. *Case on the 'massive assaults' to Melilla border fences in 2014*

No vulnerability conditions were raised in this case.

Detention:

5. *Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:*

No vulnerability conditions were raised in this case.

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.*

No information on specific vulnerability needs is provided in this case.

7. *Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

No information on specific vulnerability needs is provided in this case.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

There is no evidence that, in this judicial process, eventual circumstances relating to the particular vulnerability of the applicants were taken into consideration. The applicants are a family of four Iraqi nationals, the parents and two sons. It is stated in the factual description of the case that the wife and the children, when transferred into Spain, lived in a shelter apartment financed by the Red Cross, that they received teaching of Spanish and Basque to facilitate their integration, and that they got a maintenance allowance and psychological assistance.

B. Impact of the judicial body's decision

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

In its ruling, the Constitutional Court declares that the regime of rejection at the border, established in the 10th Additional Provision to Organic Law 4/2000 on aliens, does not incur in unconstitutionality given that this material action is subject to judicial control and must be carried out in compliance with international norms and treaties on human rights and international protection, particularly respecting the principle of *non-refoulement* and the right to asylum. For those who submit an asylum application, articles 21 and 22 of the Spanish Asylum Act on applications submitted at border posts must be applied and the formalization of applications will be carried out in the places enabled at those posts. In essence, the Constitutional Court confirms the constitutionality of the provision formalizing "rejections at the border", provided however that this is interpreted in the following way: application to individualised entries, subject to full judicial control and in compliance with international obligations.

CEAR assessed the judgment highlighting that the Constitutional Court does not endorse the operational concept of border used by Spain; that the execution of these rejections does not conform in practice with the international obligations referred to by the judgment; that there is no implementing protocol clarifying the applicable procedure; that the legal channels to access asylum in Spain are not realistic options, nor accessible in practice due to the controls undertaken by Moroccan agents at the border; and that the unclear requirements of the Court are difficult to apply, leading to a lack of legal security³¹⁵.

The practice followed by the Spanish administration afterwards cannot be claimed to respect the conditions required by the judgment issued by the Constitutional Court on 19 November 2020. For instance, at the tragic events that took place on 24 June 2022 in Melilla, in which the reaction to a massive attempt to enter in Spain through the border post "Barrio Chino" ended in 23 deaths and multiple injuries, 470 pushbacks were effectuated by Spanish authorities into Morocco, without an individualised procedure, without identifying vulnerable persons, including minors and injured persons, and without providing the

³¹⁵ CEAR, "Resumen y valoración STC Noviembre 2020 Disposición Final Primera LOPSC", <https://www.cear.es/wp-content/uploads/2020/12/VALORACION%CC%81N-CEAR-Sentencia-Tribunal-Constitucional-rechazo-en-frontera-2020.pdf>

possibility to request asylum, when most of the people involved in the crossing were of Sudanese origin³¹⁶. The Spanish Ombudsman issued in 2022 a recommendation for the urgent development of the procedure established in the 10th additional provision of the Law on Aliens, in conformity with the interpretation provided by the Constitutional Court in its judgment³¹⁷; no specific procedure has however been adopted for the implementation of this legislative provision.

A subsequent constitutionality challenge against the same law was introduced by the Parliament of Catalonia³¹⁸. As one of the pleadings related to the same provision and laid on the same arguments, the Constitutional Court recalls the provision to be in conformity with the Constitution provided that it is interpreted as the judgment 172/2020 required.

Also, reference is made to this 2020 judgment of the Constitutional Court in several cases. For instance, the Superior Court of Justice of the Canary Islands mentions the judgment to reject that orders of *devolución* decreed on the basis of art. 58.3.b) of the Spanish Law on Aliens could be qualified as illegal pushbacks or hot expulsions³¹⁹. The reasoning is based on the fact that *devolución* based on art. 58 of the Law on Aliens, in the same way than the “rejection at the border” foreseen in Organic Law 4/2015, is aimed at impeding a violation of the legal order, lacking thus a disciplinary nature, but having the nature of a governmental measure -flexible and fast- of immediate reaction against a disturbance to the legal order.

The reference to the conceptualisation of the legal nature of *devoluciones* and rejections at the border undertaken by the Constitutional Court in its judgment of 19 November 2020 is also made by the Supreme Court in a cassation appeal regarding the legal regime of centres for the temporary attention of foreigners (CATEs)³²⁰. The Supreme Court accepts the application of an order of *devolución* against an individual retained in a CATE after being rescued at sea when trying to enter irregularly in Spain.

2. Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114:

The Supreme Court acknowledged the exceptional circumstances surrounding the mass arrival of migrants in Ceuta on 17 and 18 May 2021 and the extraordinary challenge that it posed for the Spanish authorities, but the judgment made clear that those circumstances could not justify the return of the minors three months later without following the applicable legal procedures. In particular, the Court held that the Spain-Morocco Agreement did not constitute, in itself, a sufficient legal basis for returning unaccompanied minors, as it regulates the reciprocal obligations of the two States but does not establish the procedure to be followed. Its implementation therefore had to comply with the procedures and safeguards established under Spanish immigration legislation; nor could the legally prescribed procedure be replaced by an *ad hoc* procedure agreed between Spanish and Moroccan officials. The Court further held that returning a large number of unaccompanied minors without any procedure or individual assessment constituted a collective expulsion prohibited by Article 4 of Protocol No. 4 to the ECHR. It also found a violation of Article 15 of the Spanish Constitution, since the authorities had failed to assess the best interests and individual circumstances of the minors before exposing them to a potential risk to their physical or moral integrity.

³¹⁶ El País, “El Defensor del Pueblo concluye que Interior incumplió la ley en la tragedia de la frontera de Melilla”, 14 October 2022, <https://elpais.com/espana/2022-10-14/el-defensor-del-pueblo-concluye-que-interior-incumplio-la-ley-en-la-tragedia-de-la-frontera-de-melilla.html>

³¹⁷ Defensor del Pueblo, “Actuaciones y medidas de los Cuerpos y Fuerzas de Seguridad de Estado en Melilla”, 14 October 2022, <https://www.defensordelpueblo.es/resoluciones/actuaciones-y-medidas-de-los-cuerpos-y-fuerzas-de-seguridad-del-estado-en-melilla/>

³¹⁸ Constitutional Court, judgment 13/2021. 28 January 2021; ES:TC:2021:13.

³¹⁹ Superior Court of Justice of the Canary Islands, judgment of 4 November 2024, appeal no. 487/2023, ECLI:ES:TSJICAN:2024:4706; 21 October 2024, appeal no. 447/2023 ECLI:ES:TSJICAN:2024:3600; 1 July 2024, appeal no. 388/2023, ECLI:ES:TSJICAN:2024:3451; 24 June 2022, appeal no. 146/2022, ECLI:ES:TSJICAN:2022:1977; or 22 December 2021, case no. 434/2021, ECLI:ES:TSJICAN:2021:4449. Certain cases refer to *devoluciones* ordered after disembarkation in Spanish coast following interception or rescues at sea of cayucos or similar boats transporting dozens of migrants.

³²⁰ Judgment of 27 November 2024, appeal no. 7959/2022, ECLI:ES:TS:2024:5869.

The Interior Minister declared to respect the Supreme Court's decision, although he immediately stated that the return of migrant minors from Ceuta was agreed in the best interest of these children, and that competent authorities acted at all times with the full conviction of complying with the law³²¹. The government of the city of Ceuta pointed out how the ruling highlights the need to streamline solidarity mechanisms throughout Spain for the transfer of minors to other autonomous regions as quickly as possible.³²²

A second judgment of the Supreme Court of 26 January 2024, relating to the same facts, also declared illegal the return to Morocco of twelve other minors.

As a consequence of the Supreme Court's judgment, a criminal case is being held, as an offence of perversion of justice is attributed to the former President of Ceuta and the former Delegate of the central Government in Ceuta. The investigation of the case accuses them of abandonment of their duty of protection regarding the minors³²³.

Pullbacks:

3. *Marine I*, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:

The positive stance the Supreme Court adopted regarding the Spanish conduct in this case can be considered to have influenced political practice by the Spanish Government, which has attempted to act in a similar way in subsequent situations.

On 22 November 2018, a Spanish fishing vessel rescued 12 migrants in international waters off Libya. Spain negotiated with Libya to allow them to disembark, considering Libya a port of safety under international maritime law, despite objections from NGOs and UNHCR regarding the country's security (migrants were from Libya, Mali and Senegal). Those on board refused to disembark in Libya for fear of abuses. Finally, disembarkation was allowed in Malta³²⁴.

On 24 August 2023, the Spanish *Guardia Civil* patrol boat 'Río Tajo' rescued 168 migrants who had departed from Senegal. Nouadhibou, in Mauritania, was chosen as the nearest port of safety, where the vessel remained at anchor while awaiting authorization to disembark. Ultimately, Mauritania refused to accept them, creating a crisis on board under critical conditions, with tensions and health problems³²⁵. This scenario is especially relevant because it replicates the logic of the 'Marine I' case: a situation involving a rescue by Spanish authorities in international waters and a possible attempt to disembark those rescued in a third country in order to avoid their arrival on Spanish territory, where the corresponding migration and asylum procedures would otherwise have to be carried out.

³²¹ RTVE, "Marlaska defiende que se preservó el interés de los menores migrantes en las devoluciones de Ceuta a Marruecos", 23.01.2024, available at <https://www.rtve.es/noticias/20240123/marlaska-defiende-preservo-interes-menores-devoluciones-migrantes-ceuta-marruecos/15930662.shtml>

³²² Gobierno de Ceuta, "El Gobierno de Ceuta apela a la solidaridad e insta a agilizar los mecanismos de derivación de menores a otros territorios tras la sentencia del TS", 23.01.2024, <https://www.ceuta.es/gobiernodeceuta/index.php/noticia/24-menores/13287-el-gobierno-de-ceuta-apela-a-la-solidaridad-e-insta-a-agilizar-los-mecanismos-de-derivacion-de-menores-a-otros-territorios-tras-la-sentencia-del-ts>.

³²³ El Diario.es, "La exdelegada del Gobierno y la exvicepresidenta de Ceuta, al banquillo por la expulsión "arbitraria" de niños a Marruecos", 2 April 2024, https://www.eldiario.es/desalambre/exdelegada-gobierno-exvicepresidenta-ceuta-banquillo-expulsion-arbitraria-ninos-marruecos_1_11257815.html

³²⁴ El País, "España negocia devolver a Libia a 12 migrantes rescatados por un pesquero", 26 November 2018, https://elpais.com/politica/2018/11/26/actualidad/1543241449_919485.html

³²⁵ El Diario.es, "Por qué Mauritania negó el desembarco a 168 migrantes rescatados por la Guardia Civil", 28 August 2023, https://www.eldiario.es/desalambre/socio-mauritania-estrella-inmigracion-negar-desembarco-168-rescatados-guardia-civil_1_10470997.html; El Periódico, "La devolución de 168 migrantes a Senegal destapa discrepancias con Mauritania y las ONG", 31 August 2023, <https://www.elperiodico.com/es/politica/20230831/devolucion-168-migrantes-senegal-destapa-91531288>

Walls and fences:

4. Case on the 'massive assaults' to Melilla border fences in 2014

The judicial decision in these cases, by not declaring the operational concept of border to be contrary to the legal order, may have had an impact on the continuous practice followed by the Spanish administration of carrying out rejections at the border or 'hot expulsions' based on the fiction that the border is located, for the purpose of applying the aliens legislation, at the internal fence of the border system in Ceuta and Melilla, so that migrants would not be regarded as having entered Spanish territory until reaching that point. Simultaneously, the judgment was also influenced by the parliamentary consideration of the 2015 amendment to the Organic Law on Citizen Security, which was precisely aimed at regulating this situation by formalizing rejections at the border and thus providing legal cover for the decisions challenged in this case as constituting the alleged offense of misconduct in public office. The Provincial Court considered this proposal to be of great importance, as it demonstrated that the administrative resolutions appealed in this case could be reconciled with acceptable interpretative canons from the perspective of Spanish domestic law. It noted that the text ultimately adopted differs nonetheless from the initial proposal by introducing compliance with the minimum standards of human rights law as a condition, but in any case, it embraces rejections at the border along with the other alternatives provided for in the law on aliens. Nevertheless, the influence of the case on Spanish practice should be limited, given that the Spanish Constitutional Court, in its judgement on the constitutional challenge against Organic Law 4/2015 on the protection of citizens security, discredited the concept of operational border, as explained below.

Detention:

5. Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:

The doctrine developed in this case has had a significant impact on subsequent cases, particularly in multiple cases in 2020 and 2021, which replicated and applied the doctrine established by the Supreme Court³²⁶. In all these cases, the Supreme Court reiterated its doctrine according to which the calculation of the deadlines for processing asylum requests submitted at CIEs must follow the rules applicable to asylum requests made at the border, by virtue of the referral made by art. 25 to art. 21 of the Spanish Asylum Act 12/2009. This means that the calculation of deadlines is to be made in hours and without excluding public holidays. According to the Supreme Court, the deadlines must be calculated in the same way, on the basis that the different situations in which an applicant at the border and an applicant at a CIE find themselves are perfectly known by the legislator, who, in the exercise of its normative function, decided to make the referral in art. 25 without making any distinction regarding an essential element such as the calculation of deadlines. As a result, the Supreme Court held that the lack of response by the Administration within that specific deadline produces the effects foreseen in that provision, given the situation of the applicant detained in a CIE, and that these effects do not disappear when the corresponding decision is afterwards issued.

In subsequent judgments following this leading decision, the Supreme Court has been more explicit on the consequences of the Administration's failure to comply with these deadlines. For instance, in a judgment of March 2020, the Supreme Court clarified that, in those cases in which, having followed the urgent procedure that applies to admissible asylum requests at CIEs under art. 25.2 of Law 12/2009, the late notification of decisions, within the deadlines calculated in accordance with the Supreme Court's doctrine will determine the applicability of the ordinary procedure, as well as the authorization of entry and provisional stay of the applicant³²⁷. The Court stated that this may affect the personal situation of an

³²⁶ See, among others, Supreme Court, 23 January 2020, appeal no. 3348/2019; 12 March 2020, appeal no. 1840/2019; 20 July 2020, appeal no. 4629/2019; 19 October 2020, appeal no. 4278/2019; 12 July 2021, appeal no. 1002/2021; 6 October 2021, appeal no. 1722/2020.

³²⁷ Supreme Court, judgment of 12 March 2020, appeal no. 377/2020, ES:TS:2020:929.

individual retained in a CIE, since the maximum time limit for detention in those centres of 60 days might be exceeded through the processing of the ordinary procedure (which may take up to 6 months long). That situation cannot be however considered as a burden for the applicant that could limit his or her right to the legally applicable procedure; rather the Administration is under the duty to act as quickly as possible while respecting the short deadlines applicable to asylum requests submitted at CIEs. According to the Supreme Court, those situations should be solved under the legal regime governing Immigration Detention Centres and, particularly, by Preliminary Investigation Courts (*Juzgados de Instrucción*), who are responsible for authorising detention at CIEs but also for supervising release from those centres.

Another development of this line of case-law relates to the possible abuse of rights or fraud of law, also qualified for these purposes as an antisocial exercise of asylum. As explained by the Supreme Court, this concerns the situation in which an individual retained in a CIE may use the right to request asylum with the aim of avoiding the implementation of the obligation of expulsion for which detention was ordered. This reasoning, although acknowledged by the Supreme Court, fails to explain that none of this would have occurred had the Administration fulfilled its obligations and issued the relevant resolutions within the deadlines set by law. The Court would be forced to attribute to the applicant a spurious intention for which there is no evidence other than mere suspicion at the time of the asylum request. While the asylum seeker's intention to avoid expulsion may be understandable, the legislator has already tried to prevent this illegal stay in Spain by means of a special regime, namely the urgent procedure. It is therefore not permissible to establish new limitations through judicial interpretation by attributing an abusive intention to the exercise of the right to request asylum. There are dissenting opinions to this effect³²⁸, invoking the Supreme Court judgment of 29 October 2019, appeal no. 1050/2018, in which the asylum request at the CIE was qualified as fraudulent, constituting an abuse of rights according to art. 7.2 of the Spanish Civil Code and an antisocial exercise of the right to asylum that goes beyond the issue of the calculation of deadlines in art. 21 and 25 of Law 12/2009. The Supreme Court, however, indicates that this fraudulent use of the right to request asylum must be examined on a case-by-case basis³²⁹, and, when reiterating its doctrine, the judgment specifies that the applicant shall not be subject to return, refoulement or expulsion until his or her asylum request is resolved, "except in those cases in which it is sufficiently proven by the Administration that the request was made with the sole and exclusive purpose of remaining in Spanish territory, thus nullifying the effects of the execution of a firm return or expulsion order".

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.*

The judicial decision adopted in this case holds that the submission of an asylum request leads to the suspension of the procedure of expulsion based on irregular stay in respect of the applicant until the Administration declares inadmissible or reject the asylum request, since the premise underlying the expulsion procedure is not met given that the applicant's stay cannot be regarded as irregular once the asylum request has been submitted.

This Supreme Court's decision has had a significant impact on subsequent case-law, a high number of cases have applied this doctrine³³⁰. In particular, a 2022 judgment of the Superior Court of Justice of Castilla y León extended this Supreme Court doctrine by ordering the suspension of the execution of an expulsion resolution while a legal action against the rejection of an asylum request was pending (the lower

³²⁸ See cases 377/2020, 3348/2020 and 3348/2019.

³²⁹ See judgment of 12 July 2021, appeal no. 64/2020.

³³⁰ See, for instance, Superior Court of Justice of Madrid, appeal no. 1017/2022, 2 March 2023; Contentious-Administrative Court of La Rioja, appeal no. 310/2022, 14 March 2023, ES:JCA:2023:913; Superior Court of Justice of Castilla y León, 20 June 2022, appeal no. 85/2022, ECLI:ES:TSJCL:2022:2676.

court had established that the appeal against the rejection of asylum does not preclude the enforcement of the expulsion order, since the suspension of the expulsion procedure only operated while the initial decision on the asylum request was under examination). The Superior Court of Justice held, following the CJEU³³¹ and the Supreme Court (referring to case 7863/2020), that the requested precautionary measure suspending the execution of the expulsion resolution should be granted, since all effects of the expulsion decision must be suspended until the judicial proceedings challenging the rejection of the asylum request have been finally resolved.

The Supreme Court has gone in that direction by declaring that, until the judicial review of a decision denying asylum or subsidiary protection has become final, a sanctioning immigration procedure such as expulsion may not be initiated on account of irregular stay in Spain, except in cases where one of the decisions referred to in Article 46.6 of Directive 2013/32 applies³³². Along the same lines, the Supreme Court has recognised the right to remain in Spain and thus to preserve the status of asylum applicant during the judicial proceedings against the rejection of the asylum request, including the benefit of the reception conditions provided for in Directive 2013/33. This was decided in direct application of art. 46.5 of Directive 2013/32³³³. Earlier, in a 2022 judgment, the Supreme Court had already held that the applicant's authorisation to reside and work, granted during the asylum procedure, should remain in force pending the outcome of the judicial action against a rejection of asylum³³⁴.

The doctrine established in case 7863/2020 has also been explicitly reiterated by the Supreme Court itself in subsequent cases, such as in its judgment of 3 February 2022³³⁵. A very significant further jurisprudential development arises from Supreme Court's judgment of 6 November 2024³³⁶. After having confirmed the clarity of, and the need to preserve its doctrine on the determination of the effects of an asylum request on expulsion procedures, the Supreme Court is asked to specify whether the suspension must take effect from the moment the intention to request asylum is expressed or from the moment the asylum request is formalized. Interpreting Directive 2013/32 on common procedures for granting and withdrawing international protection and its anti-formalistic approach, the Supreme Court holds that the suspension of procedures of expulsion or *devolución* must take effect since the intention of requesting international protection is expressed before public authorities such as police officers, border agents, immigration authorities or staff of immigration detention centres, even if these are not competent to process the asylum request.

7. [Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:

The decision adopted by the Preliminary Investigation Court has had an extraordinary impact on subsequent case-law, at national and supranational levels, as well as on practice. Although Spanish law does not provide for judges and courts to act as competent authorities to receive asylum applications (even the Public Prosecutor argued in the case that the judge exceeded her powers by asking the third-country national about this question and by searching for available lodging facilities for asylum seekers), the judge decided to act differently in the procedure for deciding on his detention before expulsion, by hearing the applicant, informing him about his rights, receiving his intention to apply for asylum, and communicating his application for registration by the national police. When processing the judicial appeal brought by the Public Prosecutor's Office against the initial Order of the Preliminary Investigation Court, the latter

³³¹ CJEU, case C-181/16, *Gnandi*, EU:C:2018:465.

³³² Judgment of 26 October 2023, appeal no. 9097/2022, ES:TS:2023:4468.

³³³ Judgment of 13 October 2023, appeal no. 2828/2022, ES:TS:2023:4188; and judgment of 31 October 2023, appeal no. 7181/2022, ES:TS:2023:4598.

³³⁴ Supreme Court, judgment of 29 November 2022, appeal no. 1314/2022, ES:TS:2022:4365.

³³⁵ Appeal no. 1622/2020, ES:TS:2022:278.

³³⁶ Appeal no. 7691/2022, ECLI:ES:TS:2024:5568.

decided to raise a preliminary reference to the CJEU, asking about the interpretation of art. 6 of Directive 2013/32 as regards whether an examining magistrate could be included within the concept of “other authorities” before which an asylum application may be made despite not being competent to register the application; whether the examining magistrate should therefore inform applicants about where and how to present an application for international protection, should communicate any such application to the competent organs responsible for registering and processing it and to the administrative authorities competent to grant reception conditions on the basis of Directive 2013/33; and whether an applicant could, from that moment onwards, be protected by the principle of *non-refoulement* and thus avoid detention.

Through an urgent procedure under art. 107 of the Rules of Procedure of the CJEU, as requested by the Preliminary Investigation Court in view of the fact that the applicant was deprived of liberty in a CIE and subject to a removal decision, the Court of Justice replied in the affirmative to the three questions in case C-36/20 PPU³³⁷. The impact of this supranational judicial decision on clarifying the rights of asylum seekers, limiting the grounds for their detention³³⁸, providing them with protection and reception conditions from the moment the intention to ask for asylum is expressed and, overall, facilitating their effective access to asylum is evident. Thanks to the Order of the Preliminary Investigation Court, the interpretation of the Procedures Directive and the Reception Conditions Directive has been clarified, particularly extending the scope of the latter and thus the protection of asylum seekers.

Following this CJEU’s judgment, an internal note issued by the Spanish Prosecutor General’s Office on 24 July 2020 observed that, in the absence of transposition of the relevant EU directives, detention could restrict the rights afforded under Article 19 of the Spanish Asylum Act (on the effects of submitting an application) and instructed prosecutors to request detention only on grounds of public security or public health³³⁹.

Subsequent decisions by Spanish courts refer to the CJEU judgment in case C-36/20 PPU (recalling how the preliminary reference was requested by a Spanish court from San Bartolomé de Tirajana) in cases in which the expression of the intention to ask for asylum had not influenced the processing of repatriation orders (expulsion or mostly *devolución*) as asylum applications were not formalized and registered. This is the case, for instance, of the judgments by the Superior Court of Justice of Andalucía of 22 March 2023³⁴⁰, and of 3 July 2023³⁴¹, in which the appeal was granted on the basis of the jurisprudence established in case C-36/20 PPU, accepting that the police agents were authorities who could receive the expression of will to ask for asylum and communicate it to the organ responsible for processing applications. In these judgments, the Superior Court of Justice explicitly acknowledges that the interpretation provided by the CJEU in case C-36/20 PPU must lead to a change of judicial precedent or criteria, since in multiple prior judgements this Court had stated how the Spanish Asylum Act determines that the procedure to exercise the right to asylum starts with the submission of the asylum application following the formalities established in its provisions.

³³⁷ CJEU, case C-36/20 PPU, *VL/Ministerio Fiscal*, EU:C:2020:495.

³³⁸ On the impact of the CJEU’s judgment on the right of asylum seekers not to be subject to detention in Spain, see Girón-Reguera, E., “El derecho de los migrantes rescatados en el mar que soliciten protección internacional a no ser internados”, *Saber, Ciencia y Libertad*, vol. 18(2), 2023, pp. 21-47.

³³⁹ Amnesty International, “España: la privación de libertad, el oscuro método de gestión migratoria”, 20 November 2024, <https://doc.es.amnesty.org/ms-opac/image-file/byte?f=/opt/baratz/mediasearch/image-cache/raw/1/00000024/000036276/48629.pdf>, p. 37. This report shows however an inconsistent practice afterwards.

³⁴⁰ Appeal no. 158/2022, ES:TSJAND:2023:6278.

³⁴¹ Appeal no. 947/2021, ES:TSJAND:2023:16647.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

This judgment is the first ruling issued by the Supreme Court on the interpretation and application of article 38 of the Spanish Asylum Act. The judgment has decisively contributed to clarifying the full applicability of this protection mechanism despite its lack of regulatory development³⁴². It is also relevant in declaring that the assessment of the danger to the applicant's physical integrity – a condition for requesting transfer into Spain under art. 38 – shall refer to the country of origin, and not to the country from which the request for transfer was made. This was one of the main reasons why the courts had dismissed appeals relating to article 38 of Law 12/2009, namely that the applicant had not proven a situation of danger to his physical integrity in the country of transit³⁴³. In this regard, the effect of the 2020 judgment can be appreciated in a 2024 judgment of the National High Court, in which the requirement in art. 38 regarding the danger to the applicant's physical integrity was correctly applied by reference to her country of origin (Afghanistan) and not to the country where the Spanish embassy is located and from where the transfer was requested (Iran)³⁴⁴.

There are subsequent judgments reaching the same legal outcome and further framing, on the basis of this judgment, Spanish legal practice in this area, the most significant being the Supreme Court judgment of 6 February 2024³⁴⁵. This judgment confirms the full applicability of art. 38 of Spanish Law 12/2009 despite the lack of normative development and clarifies that Spanish ambassadors, and not consuls, are the competent authorities to decide on the request for transfer into Spanish territory, their role not being limited to suggesting or advancing the transfer. It is also a very relevant judgment because it addresses the legal effects of the previous issuance by the Spanish Ministry for Foreign Affairs of a laissez-passer certifying that the applicants are under the protection of the Spanish Government and urging all authorities to allow their departure from their country of origin (Afghanistan), on the basis of the serious and imminent danger to which they are exposed. This laissez-passer requires the recognition of a right to be transferred into Spain as a positive precautionary measure enabling the applicants to request asylum.

Also, reference can be made to a judgment of the National High Court, of 25 January 2021, which applies the 2020 judgment of the Supreme Court and partially upholds the appeal against the rejection of an application for international protection requested in accordance with art. 38 by a Congolese woman at the Spanish embassy in Rabat, ordering the reversal of the proceedings³⁴⁶.

The response to a cassation appeal before the Supreme Court is pending³⁴⁷. The legal question to be decided lies in determining whether the Dublin Regulation rules on the Member State responsible for

³⁴² Sánchez Legido notes how the Supreme Court's reasoning somewhat resembles the reasoning usually accompanying CJEU rulings in favour of direct effect: A. Sánchez Legido, "El reconocimiento del derecho a solicitar protección internacional en las embajadas y consulados de España (a propósito de la STS 3445/2020)", *Revista Electrónica de Estudios Internacionales*, 41, June 2021, p. 10.

³⁴³ J.A. Navarro Manich and P. Ramírez Jiménez de Parga, "El traslado a España de solicitantes de protección internacional en situación de peligro: clarificación del régimen del art. 38 de la ley 12/2009 en la sentencia del Tribunal Supremo n.º 199/2024, de 6 de febrero", *Actualidad jurídica Uría y Menéndez*, 64, mayo 2024, pp. 199-216, available at https://www.uria.com/documentos/publicaciones/8876/documento/AJUM_64-art.pdf?id=13622&forceDownload=true

³⁴⁴ National High Court, judgment of 10 October 2024, appeal 2008/2022 (ES:AN:2024:5177).

³⁴⁵ Appeal no. 2628/2023, judgment no 199/2024, ECLI:ES:TS:2024:680.

³⁴⁶ Appeal 1175/2018 (ES:AN:2021:230. However, in Superior Court of Justice of Madrid, judgment of 28 April 2023 (appeal 735/2022, ES:TSJM:2023:5680), the appeal was not granted since the applicant, an Afghan national whose brother and sister-in-law were granted the right of transfer under art. 38 of Law 12/2009, was considered to be in Iran – where the transfer into Spain was requested – for work reasons only, unrelated to an eventual danger to his physical integrity as required in art. 38.

³⁴⁷ The admissibility of the appeal was decided by Order of 12 February 2025, appeal 7392/2024, ECLI:ES:TS:2025:1485A.

examining asylum applications apply in cases of requests for transfers into Spain formalized in embassies and consulates under art. 38 of Law 12/2009.

C. Consistency with previous jurisprudence

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

The Constitutional Court had not issued previous decisions regarding rejections at the border (precisely introduced by the law whose constitutionality was at stake in this case). However, in a constitutional challenge brought by the Basque Parliamentary Assembly against an amendment to Organic Law 4/2000 on Aliens, the Constitutional Court had to pronounce itself about the constitutionality of art. 58.6, according to which the *devolución* of those persons who attempted to enter Spain illegally will be associated to a ban on entry for a maximum period of three years³⁴⁸. At that moment, the Constitutional Court, examining the legal nature of the *devolución* - to which the new rejection at the border is assimilated -, declared that this institution does not represent the exercise of the State *ius puniendi*, but it is a measure of restitution of the legality that has been infringed; and that it attempts to impede the contravention of the legal order as a governmental measure of immediate reaction against a disturbance to the legal order, without prejudice to the need to respect the applicable legal safeguards typical of the administrative procedure. Since the ban on entry associated to the *devolución* presents however a disciplinary nature, its automatic application is declared unconstitutional: although the entry ban is applied together with the order of *devolución* through an administrative procedure, the latter procedure does not respect, according to the Constitutional Court, the specific safeguards of the sanctioning procedure. The 2020 judgment is therefore in line with the previous position of the Constitutional Court regarding the nature of the *devolución* against those who attempt to enter into Spain illegally.

2. *Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114.*

The first-instance judgment issued by the Superior Court of Justice of Andalucía, Ceuta and Melilla accepted the appeal brought by the applicants, Coordinadora de Barrios and the eight returned minors, and found a violation of their right to physical and moral integrity - art. 15 of Spanish Constitution- since the Spanish authorities used the Spain-Morocco Agreement of 2007 as the only normative basis for their action of return, without following any procedure or applying any legal safeguard in accordance with the law on aliens, which was therefore not respected in this case. The Supreme Court rejects the cassation appeal lodged by the State and the City of Ceuta and thus confirms the judgment of instance. The Supreme Court also finds a violation of the prohibition of collective expulsions under art. 4 of Protocol 4 to the ECHR. Therefore, in this case the inferior court judgment was confirmed by the Supreme Court.

Pullbacks:

3. *Marine I, Supreme Court, appeal no. 548/2008, judgment no. 833/2010, supreme instance (cassation appeal), 17 February 2010, ECLI:ES:TS:2010:833:*

Spanish case-law is extremely limited on pullbacks. This judicial decision cannot therefore be compared with previous ones by the Supreme Court on these issues.

Walls and fences:

4. *Case on the 'massive assaults' to Melilla border fences in 2014*

There is no evidence of jurisprudence of the Provincial Court of Melilla prior to 2015 about the operational concept of border. Although the concept has been applied by the Spanish administration since 2005, it

³⁴⁸ Constitutional Court, judgment of 31 January 2013, constitutional challenge 1024/2004.

was in 2014 that the Operational Protocol on Border Surveillance and the Order of Services n° 6/2014 on an Anti-intrusion device on the perimeter fence of Melilla were adopted.

Detention:

5. Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:

This judicial decision is in line with previous Supreme Court's case-law on the calculation of time limits in procedures applicable to asylum requests submitted at the border. The Supreme Court had already held in 2006, with regard to the former Law 5/1984 on asylum, that the calculation of the deadline for processing and revising asylum requests submitted at the border must be undertaken, contrary to the usual rule in administrative law set out in art. 30 of Law 39/2015 on the common administrative procedure, 'from hour to hour', not in days, without the exclusion of public holidays, and from a specific moment, namely the submission of the request. The exceptionality of this rule responds to the principles of celerity and urgency that apply to a situation involving a limitation to the freedom of movement of an applicant retained at the border post³⁴⁹. This doctrine was later applied by the Supreme Court to the provisions of the current Law 12/2009 on asylum and subsidiary protection, particularly art. 21 governing requests at the border³⁵⁰. Consequently, the judicial decision in this case applies this Supreme Court's doctrine to requests submitted at Immigration Detention Centres (CIEs), holding that the referral made by art. 25 on requests submitted at CIEs to the processing rules laid down in art. 21 on requests at the border is complete, that is, it extends to the entire procedure, including the applicable deadlines as an essential element of the procedure.

Procedural barriers:

6. Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935.

The Supreme Court in this case does not refer to previous jurisprudence on the interpretation of the suspensive effects of the submission of an asylum request, but instead refers extensively to CJEU case-law on the interpretation of the Procedures Directive and the Return Directive³⁵¹. It does however note that this interpretation is the most favourable for ensuring the effectiveness of the principle of *non-refoulement* and that, according to its own case-law³⁵², the risk of fraud in law or abuse of rights can be easily avoided by solving, through fast procedures, the admissibility of manifestly unfounded applications, the Administration being the one responsible for preventing the use of the asylum procedure to artificially elude the purposes of the return policy.

Previous Supreme Court case-law on the prior Spanish asylum law of 1984 had indicated in several occasions that applying for asylum only after an expulsion order had been issued constituted an unfavourable (although not decisive) factor when assessing the asylum request, insofar as it could imply a possible fraudulent use of asylum as a means of evading repatriation³⁵³. In other judgments, it was settled that this initial negative factor could be overcome if the applicant's story really exposes a risk of persecution, which will be the determining fact in such a case, more importantly than the delay in the asylum application³⁵⁴.

³⁴⁹ Supreme Court, 5 December 2007, *appeal no. 4050/2004, ES:TS:2007:8967*.

³⁵⁰ Supreme Court, 7 November 2016, *appeal no. 1656/2016*; 3 October 2016, *appeal no. 1666/2016*; 28 September 2016, *appeal no. 1304/2016*. This doctrine is analysed within the casesheets of this project.

³⁵¹ Case C-181/16, *Gnandi*.

³⁵² Supreme Court, judgment 8 April 2021, *appeal no. 2461/2020*.

³⁵³ Judgment of 12 April 2012, *appeal no. 5823/2011*.

³⁵⁴ Tribunal Supremo, "Doctrina jurisprudencial sobre protección internacional (asilo y refugio, protección subsidiaria y autorización de permanencia en España por razones humanitarias). 2009-2012,

7. *[Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

As explained above, the position adopted by Spanish courts prior to the CJEU judgment in C-36/20 PPU was divergent, the prevailing view being that the asylum procedure started when the asylum request was lodged following the formalities described in Law 12/2009, that the suspension of procedures leading to the expulsion or the detention of asylum applicants had effects only from that formalization, and that the condition of asylum applicant was acquired only from that very moment. For instance, as indicated above, the Superior Court of Justice of Andalucía explicitly acknowledges that the interpretation provided by the CJEU in case C-36/20 PPU must lead to a change of judicial precedent³⁵⁵, since in multiple prior judgements this Court had stated that the Law on asylum and subsidiary protection determines that the procedure to exercise the right to asylum starts with the presentation of the asylum application following the formalities established in its provisions.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

This judgment is the first judicial decision relating to the application of art. 38 of Spanish Law 12/2009. The subsequent judgments are consistent among them, particularly the two main ones, this one with the Supreme Court judgment of 6 February 2024³⁵⁶.

Reasons and extent of the differences identified above

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935:*

The protective position of the Supreme Court can be said to be influenced by the terms of EU secondary law provisions, in particular of the Procedures Directive 2013/32 and the Return Directive 2008/115, as well as the interpretation provided by the CJEU on those norms, which the Supreme Court extensively quotes in its decision. This is particularly visible not only in case 7863/2020, but also in subsequent case-law referred to above on the extension of the statute of asylum applicant, including the authorisation to stay and work, as well as other reception conditions, during the processing of the judicial action against a decision rejecting asylum. This line of case-law appears to be founded on the EU law principle of consistent interpretation, by which the Spanish legislation on asylum is interpreted by the Supreme Court in accordance with art. 46 of Directive 2013/32 on common procedures for granting and withdrawing international protection.

7. *[Procedural barrier/Detention] Order of the Preliminary Investigation Court no. 3, San Bartolomé de Tirajana, 20 January 2020, procedure no. 3501/2019:*

As explained at the Order of the Preliminary Investigation Court, the Spanish Law 12/2009 on asylum and subsidiary protection does not include the concept of “other authorities” before which the will to request asylum can be expressed and that this can be attributed to the lack of transposition in Spain of the Procedures Directive 2013/32 and the Reception Conditions Directive 2013/33. The judgments by the Superior Court of Justice of Andalucía explicitly refer to the direct effect of those directives and the EU

<https://biblioteca.abogacia.es/Record/Xebook1-59769/t/doctrina-jurisprudencial-sobre-proteccion-internacional-asilo-y-refugio-proteccion-subsidiaria-y-autorizacion-de-permanencia-en-espana-por-razones-humanitarias>

³⁵⁵ Judgments of 22 March 2023, *appeal no. 158/2022, ES:TSJAND:2023:6278* and of 3 July 2023, *appeal no. 947/2021, ES:TSJAND:2023:16647*.

³⁵⁶ *Appeal no. 2628/2023, ES:TS:2024:680*.

law principle of consistent interpretation of national law³⁵⁷, which, together with CJEU case C-36/20 PPU, lie at the basis of the jurisprudential shift undertaken in those judgments.

Divergence establishing binding precedent

In Spain, as a civil law system, the binding precedent doctrine does not apply. However, the Supreme Court's jurisprudence complements the legal order, as stated in art. 1.6 of the Spanish Civil Code, and must be followed by lower judicial courts, as the National High Court, in asylum cases, or the Superior Courts of Justice. Otherwise, a cassation appeal in infringement of Supreme Court jurisprudence can be brought against their decisions.

The decision aligns with or differs from resolutions on similar barriers

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

There is not extensive case-law in Spain that directly concerns rejections at the border as an immediate reaction to attempts to illegally enter Spain as an application of the special regime on Ceuta and Melilla set by the 10th Additional Provision of the Organic Law 4/2000 on aliens or prior to that formalisation³⁵⁸. This is explained by the inherent features of pushbacks or hot expulsions, leading to the immediate return of individuals to Moroccan territory without individual identification and without following an administrative procedure with the corresponding safeguards, including the right to an effective remedy³⁵⁹.

Another case appears relevant regarding the application of the 2020 judgment of the Constitutional Court, since it offers a divergent reading that is worth highlighting. Both the decision of 4 September 2024 by the Contentious-administrative Court of Ceuta (appeal no. 149/2024), and the judgment of 24 March 2025 by the Superior Court of Justice of Andalucía³⁶⁰, rejecting an appeal against the former decision, declare that the rejection at the border set in the 10th Additional Provision of the Organic Law on Aliens relating to the special regime in Ceuta and Melilla cannot apply to an illegal entry by sea and that an extensive interpretation of the Constitutional Court judgment of 19 November 2020 so as to extend its scope to forms of access to Spanish territory other than that examined by the Constitutional Court would not be possible. As stated by the Superior Court of Justice, a person who attempts to enter Spanish territory by swimming does not surpass – or try to surpass – a “border containment element”, which is the term used in that provision and which clearly refers to those physical elements that States artificially put in place, but crosses the maritime line whose existence – physical at least – cannot be “surpassed” in the absence of a physical element. The Superior Court of Justice even mentions the usual practice of the Administration, which applies the procedure of *devolución* to those trying to approach Spanish territory by swimming³⁶¹.

³⁵⁷ Judgments of 22 March 2023, *appeal no. 158/2022, ES:TSJAND:2023:6278* and of 3 July 2023, *appeal no. 947/2021, ES:TSJAND:2023:16647*.

³⁵⁸ As can be illustrated by the limited number of cases related to pushbacks in Spain within the case-law inventory provided under this project.

³⁵⁹ The 2023 report by the Spanish Public Prosecutor Office (https://www.fiscal.es/memorias/memoria2023/FISCALIA_SITE/capitulo_V/cap_V_1_3.html) states that, although third-country nationals who are rejected at the border are entitled to bring legal actions against those rejections, that possibility is remote due to the lack of precise knowledge on these actions and of the necessary economic capacity, in addition to the evident difficulty of exercising judicial remedies when the applicant is in another country such as Morocco, which is not normally their country of nationality.

³⁶⁰ *Appeal no. 823/2024, ES:TSJAND:2025:6216*.

³⁶¹ A cassation appeal against this judgement before the Supreme Court (*appeal no. 3795/2025*) is pending at the time of submission of this report.

Walls and fences:

The judgment of 19 November 2020 of the Constitutional Court, analysed as ‘leading decision’ regarding pushbacks, is also relevant under this section on “walls and fences”, since it clarifies that access to Spanish territory takes place when the internationally established border limits have been crossed and that the border posts and containment elements (fences, walls or barriers) are located and built on Spanish territory, without there being legal coverage for a concept of border defined at the discretion of the Administration, contrary to the principle of legal certainty as enshrined in art. 9.3 Constitution. Whether this “rejection” occurs before, during or after crossing the border, it is undeniable that it concerns actions carried out by members of the Spanish security forces and implemented from Spanish territory, since individuals will be repelled or apprehended in the space between the fences or at the fence itself. Even if the activity of the agents occurred beyond Spanish territory, the foreigners apprehended would be under the control and jurisdiction of the Spanish State, with Spanish immigration legislation being applicable to them (the judgment invokes ECHR jurisprudence, particularly *Hirsi Jamaa v Italy*, to deny the existence of “zones of non-law”). This is a more straightforward pronouncement on the operational concept of border than the one issued by the Provincial Court in the leading case of “walls and fences”, which qualified the government’s concept as controversial but not forbidden.

Detention:

5. *Supreme Court, appeal no. 2459/2019, judgment no. 1801/2019, supreme instance (cassation appeal), 17 December 2019, ECLI:ES:TS:2019:4071:*

The National High Court, serving as court of first instance to this category of cases which arrive in cassation appeal before the Supreme Court, had understood that the interpretation of the calculation of deadlines the Supreme Court applied to asylum requests at the border under art. 21 of Spanish law 12/2009, could not be fully transferred to requests submitted at CIEs, since the situation of the applicant was not the same in both cases. For instance, in its judgment of 23 October 2019³⁶², the National High Court argued that calculating a deadline expressed in days on an hourly basis must be based on very exceptional grounds, such as those the Supreme Court appreciated in requests at the border in light of the deprivation of liberty to which the applicant is subject during the examination of his request. However, the situation of an applicant retained in a CIE would be different as he/she is not detained on the basis of the asylum request, but as a consequence of an expulsion procedure and under judicial authorization. Once the maximum detention period of 60 days is attained, the individual must be immediately released without prejudice to the examination of any asylum request submitted, which nevertheless suspends the implementation of the expulsion decision. As the deadline had to exclude public holidays, the Administration was considered to have acted within the legal time-limit, the appeal was therefore rejected by the National High Court. In the cassation appeal to this particular case, the Supreme Court, in its judgment of 12 July 2021, however reiterated its doctrine explained above by which the referral made by art. 25 to art. 21 of Law 12/2009 is integral to the entire procedure, including the essential element of deadlines and their calculation.

Procedural barriers:

6. *Supreme Court, appeal no. 7863/2020, judgment no. 1458/2021, supreme instance (cassation appeal), 13 December 2021, ECLI:ES:TS:2021:4935:*

Decisions adopted by the National High Court on this issue present divergences, particularly as regards the suspension of the expulsion procedure during the judicial proceedings challenging the rejection of an asylum request and the extension of the right to remain and the benefits granted to asylum applicants during the judicial process. In some cases, the National High Court assesses whether the exceptional conditions to grant or deny precautionary measures are met, while other sections of the same Court do

³⁶² *Appeal no. 566/2018, ES:AN:2019:4210.*

not undertake that assessment on the basis of the suspensive automatic effect of legal actions against asylum denials. For instance, the National High Court Order of 19 April 2023 (procedure 1073/2022) did not consider it necessary to undertake a substantive assessment of the request of precautionary measures, as the extension of those benefits, including the authorization to work, that is, the effects that the applicant sought to obtain through the precautionary measure already derive from EU Directives 2013/32 and 2013/33 as interpreted by the CJEU and from their vertical direct effect resulting from the lack of transposition by the Spanish legislator. Accordingly, the request for precautionary measures was formally rejected, since the applicant was already entitled to those benefits without the need for such measures³⁶³.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

Pronouncements issued by other judicial bodies different from the Supreme Court, that is, mainly the National High Court, align with the interpretation established by Supreme Court's judgments³⁶⁴.

Evolutionary or restrictive approach

Pushbacks:

1. *Constitutional Court, constitutional challenge no. 2896/2015, judgment 172/2020, 19 November 2020, ECLI:ES:TC:2020:172.*

Although the Constitutional Court has not had the occasion to decide very often on the specific barrier of pushbacks, the approach it has traditionally adopted with regard to access to asylum could be qualified as quite formalistic and not particularly protective or in line with the reality in practice.

In a constitutional challenge brought by the Spanish Ombudsman against former Spanish law 9/1994 on asylum, and particularly its art. 5.7(3) - according to which the asylum applicant would remain at the border post pending the examination of the admissibility of the asylum application or the subsequent reconsideration procedure (*reexamen*) -, the Constitutional Court accepted that only provisional entry in Spain, limited to the border facilities, is allowed for those who submit an asylum application at the border³⁶⁵. Although the Court recognised that applicants are, from that very moment, under the jurisdiction of Spanish public powers, they are exclusively entitled to those fundamental rights inherent in human dignity, such as the right to liberty (art. 17 Spanish Constitution). Since the deprivation of liberty the asylum border procedure implied lasted for a maximum of 6 days (a 4-day time limit for the admissibility decision, plus a 2-day time limit for the reconsideration procedure) and the applicant is free to move somewhere else (but not to obtain unconditional entry into Spain), the restriction on the liberty and freedom of movement on asylum applicants at the border was considered, by the Constitutional Court, to be proportionate and balanced.

Despite the fact that the judgment of 19 November 2020 of the Constitutional Court has been criticized for accepting the formalisation of pushbacks and failing to provide a solution based on the protection of fundamental rights, an attentive reading of the judgment may lead to the conclusion that rejections at the border are contrary to the Spanish Constitution, since its constitutionality is conditioned to requirements

³⁶³ See also references in SEPIN, "Se confirma tendencia en la Audiencia Nacional en materia de asilo", 24 November 2021, <https://blog.sepin.es/2021/11/audiencia-nacional-asilo>

³⁶⁴ See our reply to "Has the decision influenced subsequent case law or legal practice in your jurisdiction? If yes, how and to what extent?" above.

³⁶⁵ Constitutional Court, judgement of 27 February 2002, *constitutional challenge 2994/94*.

which do not apply and cannot apply in the context in which pushbacks are being undertaken³⁶⁶. If pushbacks were to comply with those requirements set by the Constitutional Court, “rejections at the border” as a legal institution established by the 10th Additional Provision to Organic Law on aliens would not be necessary; complying with the requirements set by the Constitutional Court is indeed incompatible with the practice of pushbacks undertaken by the Spanish government. For that reason, this “conditioned constitutionality”, subject to compliance with fundamental rights obligations, may in fact be interpreted as discrediting pushbacks³⁶⁷. Moreover, as Martínez Escamilla notes, it is worth recalling that the Constitutional Court makes clear that the object of its review is an abstract norm and not the specific practices that could be carried out under its protection.

The political context and the implications of a declaration of explicit unconstitutionality for the Spanish Government’s practice might explain why the Constitutional Court opted for this conditioned constitutionality; it would also have needed to depart from the position of the ECtHR in *ND and NT v Spain*. Martínez Escamilla has however criticized the way in which the Strasbourg decision was applied by the Constitutional Court, since it would not be correct to generalize its finding on the existence of safe and effective legal avenues and turn it, without further analysis, into the *ratio decidendi* for concluding that the contested provision does not entail any reduction in the protection afforded by the principle of *non-refoulement* and the right to asylum, which, on the other hand, require an assessment of the specific circumstances of the individual in question³⁶⁸.

2. Supreme Court, cassation appeal no. 6480/2022, judgment 86/2024, 22 January 2024, ECLI:ES:TS:2024:114:

It is relevant to point out that the Supreme Court does not link this case with the Constitutional Court judgment of 19 November 2020 on the formalisation or legalisation of rejections at the border through the 10th Additional Provision of Law 4/2000 on aliens. Although the governmental action at issue clearly shares the nature of a pushback, its implementation not immediately after the minors’ irregular entry into Spanish territory, but rather three months after the crossing, leads the judiciary to disregard the connection between this practice and that legal provision and the corresponding case-law on pushbacks. The Supreme Court appears, nonetheless, to hold a more protective approach towards the rights of foreign nationals, and more particularly of asylum applicants.

Walls and fences:

4. Case on the ‘massive assaults’ to Melilla border fences in 2014

The position held by the Provincial Court of Melilla is certainly restrictive as regards the concept of operational border. However, it is not possible to determine, on the basis of the available case-law, whether this reflects the court’s general approach to such issues.

Detention/Procedural barriers:

As far as the case-law analysed in this project shows, the Supreme Court adopts a progressive approach aimed at ensuring the right to seek asylum, the legal safeguards to which asylum seekers are entitled, and their fundamental rights, including the right to an effective remedy. As stated in some of its judgments related to the suspension of expulsion procedures, the Supreme Court seeks the interpretation of the applicable rules that is most favourable to ensuring the fullest possible effectiveness of the principle of *non-refoulement*. Its argumentation on the abuse of rights doctrine is quite telling, since the Supreme Court calls on the administration to comply with its own duties and responsibilities rather than requiring asylum applicants to bear limitations on their rights instead. Especially the administration is called upon to

³⁶⁶ Hernández Moreno, N., “Rechazos en frontera. Una violación sistemática de derechos humanos con respaldo institucional. ¿Hacia la normalización de una frontera sin derechos?”, *Eunomía. Revista en Cultura de la Legalidad*, 26, pp. 58-94.

³⁶⁷ Martínez Escamilla, M., “Las ‘devoluciones en caliente’ en el asunto N.D. y N.T. contra España (Sentencia de la Gran Sala TEDH de 13 de febrero de 2020)”, *Revista Española de Derecho Europeo*, 78-79, abril-septiembre 2021, p. 333.

³⁶⁸ *Ibid.*, p. 335.

adjudicate within the short deadlines provided for in the asylum legislation if it wishes to avoid an abusive recourse to the asylum procedure as a way of delaying expulsion from the territory. It can be inferred from its case-law that migration controls cannot be pursued at the expense of the right to asylum.

Other barriers:

Asylum requests at Spanish diplomatic missions

8. *Supreme Court, case no. 4989/2019, judgment no. 1327/2020, supreme instance (recurso de casación), 15 October 2020, ECLI:ES:TS:2020:3445:*

The Supreme Court's case-law on the interpretation and application of art. 38 of the Spanish Asylum Act adopts a protective approach towards applicants, recognising a mandate for the Spanish ambassadors to authorize transfers to Spain for the purpose of lodging applications for international protection when the conditions laid down in art. 38 are met, and allowing for the direct application of the provision thereby overcoming the lack of normative development to the benefit of applicants' rights³⁶⁹. This case-law of the Supreme Court, like its case-law on "pushbacks", sets limits on the Executive, preventing arbitrary exercise of State sovereign powers over the entry, residence and exit of foreign nationals regarding its territory.

³⁶⁹ As Sánchez Legido highlights, this Supreme Court ruling runs counter to contemporary political, legal and judicial trends, particularly when compared with the more restrictive approach taken by the CJEU and the ECtHR in similar cases, such as *X and X v Belgium* and *M.N. and others v Belgium*, respectively: Sánchez Legido, *op. cit.*, 2021.

PART 3: SOCIO-LEGAL FACTORS³⁷⁰

This third part of the Report is divided into four sections: I) Procedures in asylum access adjudication; II) Judicial or quasi-judicial bodies in asylum access adjudication; III) Other actors in asylum access adjudication; IV) Socio-political context.

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

Under Spanish law, the barriers to accessing asylum identified in this report may be subject to judicial review through different judicial avenues, depending on the nature of the measure or practice concerned. However, the existence of judicial remedies does not necessarily translate into developed case-law addressing every type of barrier. While some barriers have generated significant litigation and have reached the higher courts, others have rarely been the subject of judicial proceedings or have not given rise to identifiable case-law for the reasons explained below.

Pullbacks: this barrier, as specifically defined in this report, has not been addressed by Spanish courts' case-law to our knowledge. Access to judicial protection in Spain in case of pullbacks is confronted to several obstacles, mostly related to the fact that individuals affected by these practices do not achieve to reach Spanish territory³⁷¹.

Detention: individuals who wait to apply for international protection at border posts within airport facilities –for instance, at Madrid-Barajas airport– encounter significant obstacles in accessing judicial redress. They are considered not to have entered Spanish territory -they are subject to *de facto* detention in “asylum rooms”- and, since they are waiting for their asylum application to be registered, there is no administrative act they can appeal against.

Procedural barriers: among the procedural barriers defined in Part 2 of this report, difficulties in the registration of applications for international protection have not yet come before Spanish courts, and the particularly vulnerable situation of persons affected by the shortage of appointments to register and formalise asylum applications might explain this. An exception lies in a recent judgment by the Superior Court of Justice of Aragón, which upheld an appeal against administrative inaction resulting in an excessive delay in scheduling the applicant's personal appearance to register an asylum application (six months, in that case)³⁷². The Court stated that this delay effectively prevented access to the asylum procedure for a prolonged period and went beyond a mere formal irregularity, casting doubt on the effectiveness of the protection to be afforded by the State.

Other barriers: to our knowledge, the barrier related to the requirement of an airport transit visa for holders of passports from countries producing high numbers of asylum seekers has not been addressed by Spanish courts. Because this transit visa requirement is a precondition for travelling to Spain, its practical effect is that asylum seekers from those countries face greater difficulties in reaching Spanish territory. As a result, they never enter Spain, and there is no identifiable administrative act or decision capable of being challenged before the Spanish courts

³⁷⁰ The description of the institutional configuration and functioning of the Spanish judicial system, as well as its implications for access to asylum, is based on an analysis of the applicable legal framework, the relevant case law and the practical experience reflected in the legal sources examined for this report. As part of the research project underpinning this report, semi-structured interviews with judges, lawyers, NGOs and other legal intermediaries involved in asylum litigation will be conducted to corroborate, refine and complement this analysis, particularly with regard to the practical operation of the judicial system and the obstacles to effective access to justice.

³⁷¹ There is however an important case, related to the ship *Marine I* and the intervention of Spanish authorities in the high seas and in Mauritania, that could be qualified as a pullback practice. The significance and impact of the case justify it has been subject to analysis in this report.

³⁷² Superior Court of Justice of Aragón, judgment of 23 May 2024, *appeal no. 477/2023*, ECLI:ES:TSJAR:2024:782.

Time as a challenge

Procedural barriers/detention: The lapse of time has prominent relevance in the asylum procedure and thus has implications also on access to judicial redress.

According to art. 20 of the Spanish Asylum Act (Law 12/2009 on asylum and subsidiary protection), the Spanish Office of Asylum and Refuge, OAR, has one month to decide on the admissibility of an asylum request. The absence of notification of that resolution in that deadline leads to the admissibility of the claim and the granting of provisional permanence in Spanish territory. Once the asylum request has been declared admissible, the regular or ordinary procedure applies, which should last 6 months³⁷³. If no resolution is notified 6 months after the lodging of the asylum request, the latter may be considered rejected, without prejudice to the duty of the Administration to resolve explicitly.

This means that the lapse of time without resolution allows applicants to appeal before the contentious-administrative courts (or via administrative appeal, *reposición*, before the same administrative organ competent to adopt the decision). However, in practice, applicants prefer to wait until the final decision is expressly adopted in order to ensure their rights and reception conditions are preserved. According to Accem, “the duration of the asylum procedure varies significantly depending on the nationality of applicants and can last from 3 months up to 2 years, and may even reach 3 years in certain cases”³⁷⁴. It is reported that decisions on asylum requests from asylum seekers of certain nationalities were expedited by OAR in 2021, the aim of decreasing processing times was to advance with applications considered highly likely to be rejected³⁷⁵.

Backlog in deciding asylum applications by the Spanish administration represents a challenge and has been constantly increasing in recent years, as shown in section III below. To this, we should add the problems created with the huge delays in obtaining an appointment to register and lodge an asylum request in Spanish territory, as shown in Part 1 of this Report (under “procedural barriers”).

Finally, time represents a challenge in relation to appeal procedures. Spanish organisations, contributing to the EUAA Asylum report, have complained about the excessive length of judicial proceedings in asylum cases³⁷⁶, and the problems this creates for the maintenance of rights and reception conditions for asylum seekers during appeal procedures.

This is also connected to the documentation provided to asylum seekers. Once an asylum request is lodged, the applicant receives a receipt acknowledging the lodging of its application, “*Resguardo de Presentación de Solicitud de Protección Internacional*”, called *hoja blanca* or ‘white paper’. It is valid for one month; if, after that deadline, a resolution on admissibility has not been issued, the document is valid for up to 9 months from the lodging of the request (the white paper includes the number of identification as foreigner, NIE, and the authorization to work from 6 months after the formalization of the asylum request). When renewing the white paper, a ‘red card’ or *tarjeta roja* is issued to the applicant, valid for a period of 6 months, to be renewed periodically. When a resolution of rejection is issued by the Ministry of Interior, the red card expires, irrespective of the right to appeal the decision. When that right is exercised, the applicant still needs to be documented as an asylum seeker and continues to enjoy the rights attached to this status, as clarified in CJEU and Spanish case-law, analysed in this report, as direct application of EU law³⁷⁷. However, there appears to be insufficient coordination between the Police and the OAR-Ministry of Interior regarding the notification and registration by the latter of the lodging of judicial appeals and their suspensive effect³⁷⁸, and thus the need to renew the documentation of the asylum seeker. This entails the need for the applicant to ask for specific documentation by justifying the negative resolution, the

³⁷³ Art. 24 of the Spanish Asylum Act.

³⁷⁴ AIDA/ECRE, Country Report Spain, 2024 - Update 2025, p. 56.

³⁷⁵ Ibid.

³⁷⁶ EUAA, Asylum Report 2023, available at <https://www.euaa.europa.eu/asylum-report-2023>, p. 165.

³⁷⁷ Art. 46.5 of the Procedures Directive, art. 6.4 and 15.3 of the Reception Conditions Directive.

³⁷⁸ <https://acogidayasilo.blog/2021/08/18/como-acreditar-la-condicion-de-solicitante-de-asilo-pendiente-de-recurso/>

introduction of the appeal against it, the request for suspensive effects on the expulsion order and, eventually, a certificate of presumed act (*acto presunto*) when the latter has not been explicitly granted in the administrative appeal (*reposición*)³⁷⁹. At the contentious-administrative appeal however, the precautionary measures have to be explicitly decided upon by the National High Court.

The length of appeal procedures and their complications might explain that many applicants decide to start a new asylum claim, collecting more documentation and evidence to support it³⁸⁰, since Spanish asylum law does not limit the number of asylum applications per person as long as they raise new factual circumstances regarding the particular conditions of the applicant or the situation in the country of origin or residence³⁸¹.

As regards asylum procedures submitted at the border or in detention centres, the special administrative appeal foreseen in art. 21.4 of the Law 12/2009, called *reexamen*, can be brought by the applicant in a deadline of only 2 days since the notification of inadmissibility or rejection of the request. Also, the lapse of the deadline to decide on this border procedure by the Administration or to respond to the *reexamen* leads to the application of the ordinary procedure, to which additional safeguards apply³⁸².

Costs for legal representation

Since a right to free legal assistance is ensured in Spain and access to judicial protection is also free³⁸³, costs do not represent *a priori* a challenge in access to judicial redress on asylum.

Spatial and geographical issues

As far as can be observed in the context of pullbacks and pushbacks, spatial and geographical issues may significantly impact access to courts on asylum adjudication.

Pushbacks/ Walls and fences: in the case of pushbacks at the Spanish-Moroccan border, access to courts is hindered by the fact that individuals affected by these practices are normally rejected at the border without following any administrative procedure. As there is not an administrative act to appeal, judicial action will need to address a “vía de hecho” or *de facto* administrative action, besides the complications inherent to their presence outside Spanish territory.

Pullbacks: as regards pullbacks practices in which Spanish authorities participate, through joint maritime patrols outside Spanish waters, aimed at preventing asylum seekers from exiting the country of origin or transit and requesting asylum on Spanish territory, the fact that individuals do not arrive to Spanish territory, together with the difficulties in establishing that they fall within Spain's jurisdiction, undermine their access to Spanish courts and might explain the low number of cases challenging these practices.

Being present in Spanish territory to file a judicial action before Spanish courts is not mandatory, but the fact of being outside the country and the particular circumstances of asylum seekers certainly complicate an eventual judicial action on immigration and asylum matters.

Detention: spatial issues also arise regarding detention in “asylum rooms” of Spanish airports, namely the Madrid-Barajas airport, as individuals who wait to apply for international protection at the border post within airport facilities have not accessed Spanish territory and there is no administrative act to appeal neither.

³⁷⁹ Silence is positive after one month according to art. 117.3 LPCA.

³⁸⁰ AIDA/ECRE, Country Report Spain, 2024 - Update 2025, p. 61.

³⁸¹ Art. 20.1.e) of Law 12/2009. See also rules regarding subsequent applications in the Asylum Procedures Directive.

³⁸² Art. 21.5 of the Spanish Asylum Act. In its judgment of 24 January 2017 (appeal no. 100/2016, ES:AN:2017:66), the National High Court clarified that the four-day time limit within which the Administration may reject an asylum application at the border (art. 21.2 of the Spanish Law on Asylum) must be calculated as 96 hours from the submission of the application, without excluding Sundays and public holidays.

³⁸³ The filing and processing of both administrative and contentious-administrative appeals are free of charge in Spain.

Although some CIEs are located outside the main urban centres, which may impose additional costs and difficulties in accessing them, the most relevant obstacles to legal assistance and support from organizations experienced by individuals who apply for asylum while detained in these centres stem from the internal organization and the practical restrictions on communications and access to legal services, as explained under “legal aid” below. Other challenges regarding detention are addressed under the specific headings below.

Other barriers:

As pointed out in Part 2 of this Report, the barrier related to “airport transit visas” has not been, to our knowledge, addressed by Spanish courts, since the transit visa requirement for nationals of countries producing high numbers of refugees is a precondition for travelling to Spain. As a result, they do not arrive in or enter Spanish territory and there is no challengeable act by Spanish authorities.

Implications of difficulties accessing justice in asylum access adjudication

Difficulties in accessing courts in the context of asylum do not primarily affect the content of judicial decisions, but rather the types of cases that reach judicial bodies in the first place, thereby shaping their practical role in the field. In Spain, barriers such as limited or delayed access to legal assistance, accelerated procedures at the border, and the spatial location of applicants -notably in the context of pushbacks or detention in airport facilities- significantly constrain the effective exercise of the right to challenge decisions affecting access to asylum. These constraints reduce the likelihood that certain situations will be subject to judicial review, leading to an under-representation of cases clearly perceivable, for instance, on pushbacks and pullbacks.

Delays in obtaining appointments to register asylum applications, backlog in the processing of asylum requests by the Administration, complications regarding documentation and access to reception conditions also affect access to justice in asylum procedures, probably leading to a lower level of litigation concerning those procedural barriers.

B. Legal aid

When an asylum application is lodged (at the border, in detention or within the territory), the applicant must be informed of his or her right to legal assistance³⁸⁴, and the lawyer has the duty to explain the whole procedure, the applicant’s rights and obligations under the applicable legislation, as well as to prepare the application and the interview with the competent authorities, either an agent from the Asylum and Refuge Office or a police officer.

Under the Spanish Organic Law on Aliens 4/2000, third-country nationals are also entitled to legal assistance in procedures leading to expulsion, return (*devolución*) or refusal of entry³⁸⁵.

Pushbacks: third-country nationals should be entitled to legal assistance in those administrative procedures leading to their refusal of entry or *devolución* from Spanish territory (also regarding expulsion)³⁸⁶, which are however not normally applied by state authorities in pushback practices.

Walls and fences: legal assistance is mandatory in border procedures on asylum³⁸⁷, also when the applicant requests administrative revision (*reexamen*) in case his or her application is rejected or declared inadmissible.

Detention: according to art. 62 *bis* of the Spanish Organic Law 4/2000 on Aliens, third-country nationals who are held in immigration detention centres, CIEs, are entitled to legal assistance, including by an

³⁸⁴ The asylum applicant, once the application has been lodged, has a right of free legal assistance and right to an interpreter (art. 18.1.b) Law 12/2009).

³⁸⁵ Art. 22.2, which also refers to this right in relation to asylum procedures, as indicated above.

³⁸⁶ Art. 22.2 of Spanish Organic Law 4/2000 on Aliens. This provision also recognises the right to an interpreter.

³⁸⁷ According to art. 19.4 of the Spanish Asylum Act, asylum applicants are entitled to interview with a lawyer at the border posts areas and at CIEs.

assigned or duty lawyer if necessary, and to communicate with their lawyer, even outside the centre's opening hours, in case of emergency. The lawyer's role is essential in informing the detainee of his or her right to request international protection³⁸⁸.

Regulation on CIEs establishes that each centre will be equipped with rooms for interviews with lawyers (art. 6.i)³⁸⁹, aimed at ensuring confidentiality of legal assistance provided to detainees (art. 15.4). The Regulation explicitly refers to the right to legal assistance all detainees enjoy, including free legal aid (art. 16.2.g)).

Procedural barriers: in asylum procedures within the territory, the applicant is entitled to legal assistance³⁹⁰, but this is not mandatory³⁹¹.

In Spain, as far as all barriers are concerned, legal assistance is mandatory in all judicial appeals of a contentious-administrative nature, but not in administrative appeals such as *reposición*. Representation by a court agent is optional before unipersonal courts and mandatory before collegiate courts³⁹².

Free legal aid

According to art. 16.2 of the Spanish Asylum Act, every applicant is entitled to free legal aid, a right which applies since the formalization of the application and throughout the entire procedure, on the conditions provided in Spanish legislation for this purpose. Spanish Law 1/1996 on free legal assistance establishes, in art. 2.e), that foreigners who accredit insufficient resources to litigate will have the right to free legal assistance, defence and representation in those procedures that could lead to refusal of entry into Spain, return or expulsion from Spanish territory, and in all asylum procedures³⁹³.

When submitting asylum applications at the border³⁹⁴, and when filing contentious-administrative appeals against negative resolutions during the asylum procedure or against return, *devolución* or expulsion decisions³⁹⁵, legal assistance is mandatory³⁹⁶. In those cases, an application for free legal aid can be submitted. Simultaneously, an application, addressed to the competent court, should be filed in order to suspend the deadline established to introduce legal action as long as the application for free legal aid is examined. The National High Court has clarified that, when the judicial challenge has not been introduced yet, that deadline is suspended until free legal aid is decided and the designation of lawyer and court agent is made; when free legal aid has been requested once the judicial action has been introduced, it is the judicial procedure itself which is suspended³⁹⁷.

The request for free legal aid is submitted before the service of legal orientation of the corresponding bar association, or before the court where the applicant is domiciled or the judicial process takes place, which

³⁸⁸ Natta, C.M., « El papel de la Abogacía en la información sobre el derecho de asilo en España », Abogacía Española, available at <https://www.abogacia.es/conocenos/fundacion/migraciones-ddhh/documentos-de-interes/el-papel-de-la-abogacia-en-la-informacion-sobre-el-derecho-de-asilo-en-espana/>

³⁸⁹ Real Decreto 162/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros, BOE no. 64, 15 March 2014.

³⁹⁰ Art. 22.2 of Spanish Organic Law 4/2000 on Aliens. This provision also refers to right to be assisted by an interpreter.

³⁹¹ The Supreme Court has had the opportunity to interpret the Spanish law on asylum and the organic law on aliens to clarify that implicit renunciation to non-mandatory legal assistance is allowed, provided that complete and correct information on his/her rights is provided to the asylum applicant in a written form signed by the latter: Supreme Court, judgment of 2 November 2022, appeal no. 7765/2021, ECLI:ES:TS:2022:4002.

³⁹² Art. 23 of the Spanish Law 29/1998 on Contentious-Administrative Jurisdiction/ Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa.

³⁹³ Ley 1/1996, de 10 de enero, de asistencia jurídica gratuita, BOE no. 11, 12.01.1996/ Law 1/1996, of 10 January, on free legal assistance. See also art. 22.2 of Spanish Organic Law on Aliens. Art. 22.3 *in fine* extends the right of free legal aid to third-country nationals who are outside Spain, the application for free legal assistance and the will to appeal being made, in that case, before the diplomatic mission or consular office.

³⁹⁴ Art. 16.2, second para., of Spanish Asylum Act.

³⁹⁵ Art. 23 LJCA.

³⁹⁶ In contentious-administrative procedures, representation by a court agent (*procurador*) is also required.

³⁹⁷ National High Court, judgment of 21 July 2017, *appeal no. 533/2016*, ECLI:ES:AN:2017:3274.

will forward the request to the bar association³⁹⁸. Asylum seekers may also resort to the assistance of NGOs specialized in migration and asylum, which provide free services of legal counsel to asylum seekers³⁹⁹.

Challenges in obtaining legal representation in asylum access adjudication

It is reported as main criticism regarding legal assistance and access to international protection that third-country nationals who have been issued a removal or expulsion order and are awaiting the outcome of the procedure within a detention centre usually lack information on the asylum procedure, and are affected by the short timeframe of the urgent procedure applied to asylum claims lodged in detention⁴⁰⁰. This requires a prompt reaction to official notifications difficult to undertake when the applicant is detained⁴⁰¹. Likewise, the deadline to introduce the special administrative appeal of *reexamen* against the resolution declaring inadmissible or rejecting the application on the asylum border procedure extends only to 2 days since notification of the resolution.

At the CIE of Las Palmas (Canary Islands), the Jesuit Service for Migrants reports obstacles on the provision of legal assistance to detainees on migration matters, including difficulties for lawyers who cannot demonstrate that they represent a particular detainee to gain access to the centre, as well as practical difficulties where lawyers appointed to represent detainees are based on other islands⁴⁰².

There have also been complaints on the availability and quality of legal assistance provided to migrants who disembark in high numbers at the Spanish coasts (eg. Canary Islands). For instance, in 2020, the appointed or duty lawyers (*abogados del turno de oficio* in Spanish) were summoned by the Police Department of Las Palmas to assist 1600 people who were at 40km, huddled at the dock. Many lawyers signed the return orders (*devolución*) without even meeting their clients, nor interviewing them to confirm whether they needed international protection⁴⁰³. The Spanish Ombudsman highlighted, in his annual report of 2024, the efforts made by the General Council of Spanish Lawyers (CGAE) and the Bar associations of Las Palmas and Lanzarote in improving legal assistance to third-country nationals arriving irregularly by sea to the Canary Islands and the launching of the quality and support service on migration and international protection of the Sub-commission on these matters of the CGAE⁴⁰⁴.

Complaints have also been raised as regards the legal assistance provided to asylum applicants in the “asylum rooms” of the Madrid-Barajas airport. The Bar Association of Madrid denounces the circumstances in which duty lawyers are carrying out their function, which are characterised by the lack of qualified interpreters, the workload of migration/asylum staff and police agents, the absence of minimum resources to undertake their work (inadequate areas or even the lack of tables) or the deficient economic conditions in which duty lawyers act (who have to bear additional costs of parking and food themselves)⁴⁰⁵.

³⁹⁸ See the information provided by the General Council of Spanish Lawyers on free legal aid here: <https://www.abogacia.es/servicios/ciudadanos/servicios-de-orientacion-juridica-gratuita/>

³⁹⁹ A list of organizations is provided by UNCHR here: <https://help.unhcr.org/spain/donde-encontrar-ayuda-espana/asistencia-legal/#:~:text=Para%20solicitar%20asistencia%20jur%C3%ADdica%20gratuita%20en%20Espa%C3%B1a,a%20viernes%2C%20de%209:00%20a%2014:00%20horas.>

⁴⁰⁰ Art. 25.2 Spanish Asylum Act.

⁴⁰¹ AIDA/ECRE, Country Report Spain, 2024 - Update 2025.

⁴⁰² SJM, *Informe CIE 2023. Internamiento “muteado”. Personas cuyo sufrimiento queda oculto a la sociedad*, 2024, available at <https://sjm.org/2024/06/10/informe-cie-2023-internamiento-muteado/>, p. 24.

⁴⁰³ El País, “Los fallos de la asistencia jurídica a los migrantes en Canarias o el caso del albino que nadie vio”, 11 November 2020, available at <https://elpais.com/espana/2020-11-11/los-fallos-de-la-asistencia-juridica-a-los-migrantes-en-canarias-o-el-caso-del-albino-que-nadie-vio.html>

⁴⁰⁴ Defensor del Pueblo, Informe Anual 2024, p. 166.

⁴⁰⁵ Ilustre Colegio de la Abogacía de Madrid, “El Decano del Ilustre Colegio de la Abogacía de Madrid denuncia ante el Ministro del Interior la situación insostenible de la asistencia jurídica en el Aeropuerto de Madrid-Barajas”, 20 August 2024, available at <https://web.icam.es/icam-denuncia-ante-el-ministro-del-interior-la-situacion-insostenible-de-la-asistencia-juridica-en-aeropuerto-madrid/>

Special references should be made to the particular vulnerability of unaccompanied minors and the need to provide those applying for asylum with legal assistance. This concern has been addressed by the Spanish Ombudsman since 2006, and has reappeared in 2024, when UNCHR conducted more than 500 interviews to unaccompanied minors hosted at reception centres in the Canary Islands. According to its report, 50% of minors interviewed needed international protection, while 69% of minors interviewed had not received any information on their right to apply for asylum and international protection procedure in Spain. Of the rest of minors who were informed of that right, 15% alleged they did not understand it. This situation may be due, according to UNCHR, to a lack of sufficiently trained personnel working in this area⁴⁰⁶.

After these visits in 2024, the Spanish Ombudsman suggested recommendations to adopt measures capable of improving the identification of minors with protection needs, including a collaboration protocol with the Ministry of Interior aimed at facilitating the lodging of applications by minors and their referral to hosting resources adequate to their needs. The Spanish Ombudsman also proposed to replicate, for this purpose, the coordination experience represented by the centres of reception, attention and referral (*Centros de Recepción, Atención y Derivación*, called CREADE) aimed at assisting displaced persons from Ukraine after the Russian invasion of February 2022⁴⁰⁷. These centres are aimed at providing reception and initial assistance, including lodging, helping with the obtention of the temporary protection permit, and the referral of beneficiaries to entities of the refugee reception network⁴⁰⁸.

Implications of the availability, quality, and accessibility of legal aid on asylum access adjudication

While applications for free legal aid in Spain have been increasing since 2020, the number of lawyers registered on the duty roster in Spain (“*turno de oficio*”⁴⁰⁹) has been declining since 2019, when they accounted for 31% of all lawyers in the country; by 2024, duty lawyers made up 26,8%⁴¹⁰. Reasons for this decline lie in the alarming conditions under which the service is provided, delays in payments, and low retributions⁴¹¹. Duty lawyers assigned to migration affairs in the whole country account for 8.717 of the total of 39.941 duty lawyers.

It is important to note that conditions, management and financing of duty lawyers are not homogeneous in Spain. Although there is state legislation on free legal assistance – Law 1/1996 establishes the common normative framework for the whole country –, the Ministry of Justice is only competent in this matter in those autonomous communities where competences have not been transferred (Castilla y León, Castilla-La Mancha, Extremadura, Murcia, Baleares, Ceuta and Melilla).

The rest of autonomous communities in Spain (Andalucía, Cataluña, País Vasco, Galicia, Madrid, Comunidad Valenciana, Canarias, Aragón, Asturias, Navarra, Cantabria and La Rioja) are competent to organise the duty roster, determine the modules and basis for economic compensation, finance the services of free legal assistance, as well as to supervise and evaluate the quality of the service. This means there are

⁴⁰⁶ Spanish Ombudsman, *Niñas y niños extranjeros en España solos o acompañados*, May 2025, available at <https://www.defensordelpueblo.es/wp-content/uploads/2025/05/Ninas-y-ninos-extranjeros-en-Espana-solos-o-acompanados.pdf>

⁴⁰⁷ *Ibid.*

⁴⁰⁸ Available at <https://ucraniaurgente.inclusion.gob.es/w/centros-recepcion-atencion-derivacion-desplazados-ucrania>

⁴⁰⁹ Registration as duty lawyer is voluntary in Spain.

⁴¹⁰ Abogacía Española-Aranzadi La Ley, XIX Informe del Observatorio de la Justicia Gratuita. Estadística completa 2019-2024, June 2025, p. 22, available at <https://www.abogacia.es/wp-content/uploads/2025/07/XIX-Informe-Observatorio-Justicia-Gratuita.pdf>

⁴¹¹ ICAM, “El Decano del ICAM solicita a Justicia la mejora urgente de las condiciones del Turno de Oficio”, 4 October 2023, <https://web.icam.es/el-decano-del-icam-solicita-a-justicia-la-mejora-urgente-de-las-condiciones-del-turno-de-oficio/>; Cadena Ser, “ICAMUR alerta: suben las asistencias jurídicas, pero bajan los abogados del Turno de Oficio”, 11 July 2025, <https://cadenaser.com/murcia/2025/07/11/icamur-alerta-suben-las-asistencias-juridicas-pero-bajan-los-abogados-del-turno-de-oficio-radio-murcia/>; elDiario.es, ““Turno de oficio, no a nuestra costa”: la abogacía andaluza denuncia la “precariedad” de la justicia gratuita”, 12 July 2024, https://www.eldiario.es/andalucia/turno-oficio-no-costa-abogacia-andaluza-denuncia-precariedad-justicia-gratuita_1_11520833.html

disparities in their functioning, leading to eventual differences in the service of legal assistance that foreigners and asylum seekers receive in Spain.

For instance, the Community of Madrid approved a new decree in 2025, Decree 35/2025, which introduces improvements, including measures to facilitate the procedure for recognizing eligibility for free legal assistance or updating the fees paid to lawyers. Strengthening financing was also the subject of an agreement between the Community of Madrid and the Madrid Bar and Court Agents Associations⁴¹². Disparities in lawyers' retributions are also evident⁴¹³.

Bar associations have undertaken actions, in some cases in collaboration with UNCHR, in order to improve legal assistance to asylum seekers in Spain. As indicated in the AIDA Report, the Madrid Bar Association (the "ICAM") and UNHCR signed an agreement to strengthen the provision of legal assistance to persons in need of international protection. Thanks to this cooperation, a specialized unit on international protection was set in 2022 within the ICAM, with the objective of providing legal orientation to access rights, transferring people in need of legal assistance to their services or to those on free legal aid, facilitating technical support and training on international protection to lawyers, collecting data and monitoring the situation of persons in need of international protection in the province of Madrid⁴¹⁴. A similar agreement was adopted between UNCHR and the Bar Association of Murcia, including the creation of a specialized service on legal assistance on international protection⁴¹⁵, and with the Bar Association of Almería⁴¹⁶. In 2023, the Spanish General Council of Lawyers set in motion a service to support bar associations from all over the country in matters of aliens and international protection, with the aim of understanding the needs of lawyers and help them ensure a quality service⁴¹⁷.

Also, UNHCR and the General Council of Spanish Lawyers (CGAE) have drafted protocols and guides on legal assistance during asylum procedures, aimed at providing lawyers with useful information on legal and practical standards supporting their daily work, such as the Guidelines for the Provision of Legal Assistance to Applicants for International Protection, prepared by UNCHR and the Bar Association of Madrid⁴¹⁸, or the Practical Guide for Lawyers on international protection of asylum seekers, prepared by UNCHR and the Foundation of the Spanish legal profession⁴¹⁹.

⁴¹² Cinco Días, "La Comunidad de Madrid firma un convenio con abogados y procuradores de la región para mejorar las condiciones del turno de oficio", 11 November 2024, <https://cincodias.elpais.com/legal/2024-11-11/la-comunidad-de-madrid-firma-un-convenio-con-abogados-y-procuradores-de-la-region-para-mejorar-las-condiciones-del-turno-de-oficio.html>

⁴¹³ Cinco Días, "Bolaños firma la orden que incrementa un 8 % la retribución de los abogados y procuradores del turno de oficio del 'territorio ministerio'", 21 March 2025, <https://cincodias.elpais.com/legal/2025-03-21/bolanos-firma-la-orden-que-incrementa-un-8-la-retribucion-de-los-abogados-y-procuradores-del-turno-de-oficio-del-territorio-ministerio.html>

⁴¹⁴ ICAM, "El Ilustre Colegio de la Abogacía de Madrid (ICAM) y ACNUR colaboran para reforzar la atención legal a las personas solicitantes de protección internacional y refugiadas", 15 July 2022, available at <https://web.icam.es/el-ilustre-colegio-de-la-abogacia-de-madrid-icam-y-acnur-colaboran-para-reforzar-la-atencion-legal-a-las-personas-solicitantes-de-proteccion-internacional-y-refugiadas/>. See the website of this unit at <https://soj.icam.es/proteccion-internacional/>

⁴¹⁵ ICAMUR, "El Colegio de Abogados de Murcia y ACNUR impulsan la atención legal a refugiados", 15 October 2022, available at <https://www.icamur.org/web/content/el-colegio-de-abogados-de-murcia-y-acnur-impulsan-la-atencion-legal-refugiados>

⁴¹⁶ Diario de Almería, "ACNUR y el Colegio de Abogados de Almería renuevan su colaboración en favor de una atención especializada en protección internacional", 2 March 2023, available at https://www.diariodealmeria.es/almeria/ACNUR-Colegio-Abogados-Almeria-especializada_0_1771024798.html

⁴¹⁷ CGAE, "La Abogacía pone en marcha el servicio de calidad y apoyo a los Colegios en materia de Extranjería", 1 February 2023, available at <https://www.abogacia.es/actualidad/noticias/la-abogacia-pone-en-marcha-el-servicio-de-calidad-y-apoyo-a-los-colegios-en-materia-de-extranjeria/>

⁴¹⁸ UNHCR-Bar Association of Madrid, "Guía de actuación en la asistencia jurídica a solicitantes de protección internacional", October 2024, available at <https://www.acnur.org/fileadmin/Documentos/Publicaciones/2011/8257.pdf>

⁴¹⁹ "La protección internacional de los solicitantes de asilo. Guía práctica para la abogacía", prepared by UNCHR and the Foundation of the Spanish legal profession, 2017, available at <https://www.abogacia.es/publicaciones/ebooks/la-proteccion-internacional-de-los-solicitantes-de-asilo/>

C. Lodging the appeal

Pushbacks: when pushbacks are challenged on the grounds of violation of administrative law (returns or rejections at the border executed without processing an administrative decision, breach of the Spanish Organic Law on Aliens 4/2000 or the Spanish Law on Asylum and Subsidiary Protection 12/2009), jurisdiction at first instance generally lies with the *Juzgados de lo Contencioso-Administrativo*/Contentious-administrative Courts⁴²⁰. In such cases, the judicial appeal must be lodged by means of a full statement of claim as the judicial procedure to be followed is the so-called “abbreviated procedure” (art. 78 LJCA). This statement of claims must contain the factual and legal merits of the case, and it shall be filed jointly with all required evidence. Lodging the appeal must be made within a deadline of 2 months since the notification of the formal administrative resolution to be challenged or within 20 days from *de facto* administrative action (*vía de hecho*)⁴²¹, the usual scenario regarding pushbacks as normally no formal administrative decision has been adopted.

Pullbacks: if a judicial challenge is lodged regarding any practice or decision taken regarding pullbacks abroad, it will normally fall under the jurisdiction of the contentious-administrative chamber of the National High Court/*Audiencia Nacional*⁴²², since administrative actions or omissions would be the competence of the central bodies of the State administration. In this case, the appeal starts by means of a simple statement that only contains the notice of challenge to the administrative decision. After the appeal is admitted for processing, the Administration is required to submit the administrative file to the Court. Once the Administration has appeared in the proceedings, the appellant has 20 days to file the full statement of claim, and the administration then has another 20 days to submit its statement of defence. An additional burden applies in the procedure, since the asylum seeker will not only need a lawyer, but also a court agent (*procurador*), which requires the involvement of two legal professionals in the appellant’s defence.

Walls and fences: this barrier has been generally contested through appeals against the administrative acts adopted in execution of the service orders issued by the commanding officers of the Guardia Civil, which provide instructions on how their agents should act when migrants attempt to overcome the fences. Such acts fall under the jurisdiction of the Contentious-administrative Courts/*Juzgados de lo Contencioso-Administrativo*⁴²³. The lodging of appeals will follow the abbreviated procedure described for pushbacks above.

Detention: if an individual asks for asylum while placed in detention within a CIE, the relevant asylum procedure will be the urgent procedure applicable to asylum requests submitted at the border, as regulated in art. 21 of Law 12/2009. This means that the asylum seeker may only be kept in detention during the admissibility phase (4 working days), being released from the CIE to continue with the merits-phase once the asylum request is admitted. As explained below under “procedural barriers”, the judicial challenges regarding asylum decisions also apply in these circumstances.

Individuals who apply for asylum at the airport must remain in the specific spaces provided for that purpose (*salas de asilo* o *salas de inadmitidos*); the urgent border asylum procedure also applies, which means that a decision on admissibility or on its merits must be adopted within 4 working days of the application being lodged⁴²⁴. Delays in the registration and processing of the applications at the Madrid-Barajas airport led to an informal situation of detention -especially serious in light of the appalling conditions in those overcrowded rooms-, since applicants cannot abandon those areas, nor access Spanish territory.

With regard to both situations of detention, art. 62 of the Spanish Aliens Act establishes that the judge competent to authorize and, where appropriate, revoke detention shall be the Investigating Judge/*Juez de*

⁴²⁰ Art. 8.4 Spanish law 29/1998, regulating the Contentious-Administrative Jurisdiction, LJCA.

⁴²¹ Art. 46.1 LJCA. In Spain, judicial appeals are materially lodged digitally by the lawyer or the court agent.

⁴²² Art.11.1.a) LJCA.

⁴²³ Art. 8.4 LJCA.

⁴²⁴ Art. 21 of the Spanish Asylum Act.

Instrucción of the place where detention is made⁴²⁵. The judge competent to oversee the stay of foreigners in CIEs and border inadmissibility areas shall be the Investigating Judge of the place where they are located, and a specific court must be designated in those judicial districts where several exist. This judge shall hear, without further appeal, any petitions and complaints filed by detainees insofar as they affect their fundamental rights. Likewise, the judge may visit such centers when becoming aware of any serious infringement or when considered necessary. Against decisions of the Investigating Judge, the individual can lodge judicial actions of reform (*recurso de reforma*), and appeal (*apelación*) before the same Judge, and actions of complaint (*queja*) before the superior court, i.e. the Provincial Court/ *Audiencia Provincial*⁴²⁶. These judicial challenges must be brought in writing, with the intervention of a lawyer⁴²⁷.

Procedural barriers: resolutions rejecting an application for international protection on inadmissibility grounds should be appealed before the Central Contentious-administrative Courts/*Juzgados Centrales de lo Contencioso-Administrativo*⁴²⁸. This judicial challenge must be lodged by means of a full statement of claim following the “abbreviated procedure”⁴²⁹, as explained in pushbacks. This statement of claim must contain the factual and legal merits of the case, and it shall be filed jointly with all required evidence for the case.

Resolutions denying applications for international protection on the merits should be appealed before the contentious-administrative chamber of the National High Court/ *Audiencia Nacional*⁴³⁰. The appeal starts with a simple statement only containing the notice of challenge to the administrative decision. Full statement of defence will be later filed once the Administration appears before the court on the proceedings. The involvement of both a lawyer and a court agent is required.

Those resolutions adopted by the Ministry of Interior within the urgent procedure at the border or in detention centres, regulated in art. 21 of Law 12/2009, are susceptible to judicial challenge in the same terms as explained above (after lodging the optional administrative appeal of *reexamen*), depending on whether the resolution decides on inadmissibility or on rejection on the merits of the asylum request.

If the procedural barrier relates to other administrative procedures on aliens (for instance, appeal against an expulsion decision), a contentious-administrative appeal shall be filed before the Contentious-administrative Courts/*Juzgados de lo Contencioso-Administrativo*⁴³¹, whose jurisdiction includes the seat of the administrative body that issued the contested act or decision. In these cases, as in pushbacks, the abbreviated procedure applies and thus the full statement of claim is requested.

In all these situations, lodging the appeal – as in every judicial challenge against the action or inaction of the Administration- must be done within a deadline of 2 months since the notification of the formal administrative resolution to be challenged or within 20 days from initiation of *de facto* administrative action (*vía de hecho*)⁴³².

In accordance with the principle of enforceability of administrative acts set out in Article 38 of Law 39/2015⁴³³, the lodging of a contentious-administrative appeal against decisions in matters of asylum, return, removal or expulsion does not, in itself, entail the suspension of their effects. It is therefore

⁴²⁵ The reform to the LOPJ by Organic Law 1/2025 replaces this unipersonal courts by “tribunales de instancia” (Courts of Instance) as collegiate courts composed of different sections, including one on investigation, as explained in Part 2 of this National Report. A judicial challenge could be introduced too under an informal/illegal situation of detention.

⁴²⁶ See art. 216 et ss. Spanish Law on Criminal Procedure.

⁴²⁷ Art. 221 Spanish Law on Criminal Procedure.

⁴²⁸ Art. 9.1.e) LJCA.

⁴²⁹ Art. 78 LJCA.

⁴³⁰ Art. 11.1.a) LJCA.

⁴³¹ Art. 8.4 LJCA.

⁴³² Art. 46.1 LJCA. In Spain, judicial appeals are materially lodged digitally by the lawyer or the court agent.

⁴³³ *Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas*, BOE no. 236, 2 October 2015 / Spanish Law 39/2015, on Common Administrative Procedure of Public Administrations.

necessary to request and obtain interim or precautionary measures in accordance with the Law governing Contentious-Administrative Jurisdiction⁴³⁴.

Implications regarding the procedural aspects for lodging the appeal in asylum access adjudication

Procedural aspects related to the lodging of contentious-administrative appeals may play a decisive role in determining which decisions are effectively examined by judicial bodies. While formal access to judicial review is ensured and the general time limit for challenging administrative acts is not particularly strict, the effectiveness of such review is contingent on the applicant's ability to obtain interim or precautionary measures pending the outcome of the judicial challenge. This, together with the technical complexity of contentious-administrative litigation, formal admissibility rules, limitations on the introduction of new facts or evidence, and difficulties in accessing effective specialised legal assistance -particularly regarding border procedures and situations of detention, as explained above- affects which cases reach a substantive examination on the merits. In practice, these barriers impact both the quality and the viability of appeals and may result in inadmissibility decisions or in the absence of meaningful judicial scrutiny. Importantly, such constraints do not affect all cases equally: situations involving pushbacks at the border or detention frequently face more important obstacles, not only due to procedural requirements, but because the nature of these practices may prevent the activation of judicial review itself.

D. Hearing

Hearings take place in abbreviated proceedings, which apply to judicial challenges on migration-related cases and against inadmissibility decisions of asylum applications. These cases fall under the first instance jurisdiction of the Contentious-administrative Courts/*Juzgados de lo Contencioso-Administrativo* and the Contentious-administrative Central Courts/*Juzgados Centrales de lo Contencioso-Administrativo*⁴³⁵.

The hearing will consist of an oral trial of the case where the claimant presents his or her submissions first, followed by the defendant/the Administration, who may raise jurisdiction, venue, standing, time-bar or other procedural objections (these are argued and decided on the spot before the case moves forward). If the dispute revolves around facts, the court decides which facts must be supported by evidence, and which must be presented (even witness and expert witness) right away in the same hearing. Thus, the witness testimony is examined orally, without written questionnaires; party interrogatories are proposed *viva voce*, and expert evidence proceeds directly proposed by the parties. The judge may limit repetitive witnesses and exclude impertinent proof. Objections to evidentiary rulings and any alleged impairments of fundamental rights are addressed through immediate reconsideration (*reposición in voce*), argued and resolved then and there. If essential evidence cannot be produced for reasons not imputable to the proposing party, the judge briefly suspends and immediately reschedules the continuation to complete the evidentiary phase. Once evidence is closed, parties deliver concise oral closings, after which the court may deliver its judgment. Attendance is critical by means of the legal counsels/lawyers: if only the defendant's counsel appears, the claimant is deemed to have withdrawn the action (with costs); if the claimant's counsel appears and the defendant's does not, the hearing continues. Throughout the hearing, the session is audio/video recorded (or minuted in detail if recording fails), preserving the oral and concentrated character that defines the abbreviated procedure. This proceeding is always followed before a single judge.

It is relevant to note that the Spanish Constitutional Court granted *amparo*, that is, upheld the appeal for constitutional protection of fundamental rights, to an asylum seeker because of undue delays in scheduling the hearing at the judicial appeal against the resolution rejecting the asylum request as inadmissible⁴³⁶. In the judgment, the Constitutional Court concluded that, even if the delays experienced in the proceedings are the result of structural or organizational deficiencies in the judicial bodies or the overwhelming

⁴³⁴ Art. 129 et seq. LJCA.

⁴³⁵ Art. 78 LJCA.

⁴³⁶ The appeal had been brought before the Central Contentious-Administrative Court on 28 July 2009 and the Court, through an order of 30 July 2009, set the hearing for 15 February 2011.

workload they bear as in this case, this hypothetical organizational situation, while it might exempt the individuals involved in the proceedings from liability, in no way alters the unjustified nature of the delay⁴³⁷. The Constitutional Court attached particular importance to the fact that the inadmissibility of the appellant's asylum application placed him in an irregular situation in Spain and could result in his being forced to leave the national territory⁴³⁸.

During non-abbreviated proceedings, such as those applicable to judicial challenges against resolutions denying an asylum application, a hearing might take place only for the examination of witnesses and expert witnesses, whose testimony usually takes place nonetheless by written questionnaires. In practice, hearings and examination of witnesses are not usual in asylum cases.

In second or subsequent instances⁴³⁹, a hearing is not automatic: the court will first decide whether any evidence should be taken (where exceptionally admitted on appeal), and if evidence is admitted, it will be taken with notice to the parties. In their appeal and opposition briefs, either party may request that a hearing be held, that written closings (*conclusiones*) be filed, or that the case be declared ready for judgment without further formalities; the Court clerk (*Ltrado/a de la Administración de Justicia*) will order a hearing or written closings if all parties so request or if evidence has been taken, and the court chamber may also order a hearing or closings on its own motion when the nature of the case so requires. Once the hearing is held or closings are filed, the case is declared concluded for judgment, and the chamber must issue its judgment. However, judicial practice shows that courts are reluctant to hearings in second instance so that they only take place if any evidence is exceptionally admitted. Most likely, the second instance will be directly decided after the appeal and opposition briefs are submitted.

Likewise, in cassation appeals⁴⁴⁰, the competent section of the Supreme Court will order a public hearing on its own motion or at a party's request only if the Court deems it necessary considering the nature or complexity of the case. In practice, the Contentious-Administrative Chamber rarely holds oral hearings in cassation⁴⁴¹.

E. Deliberation

When the case is decided by the *Audiencia Nacional*/National High Court or by the Supreme Court, the deliberation will take place by the five judges that integrate the corresponding section of the Contentious-administrative Chamber that is entrusted with the resolution of litigation related to asylum. Out of the five judges, every case is entrusted to a Judge-Rapporteur who is chosen by rotatory turn according to previously approved rules by the Governing Chamber of the relevant Court, ensuring the independence of the elected judge and the constitutional right to a judge previously determined by law. Thus, the Judge-Rapporteur will present the case and a draft of the judicial resolution to be discussed and voted on by the section of the chamber.

Nevertheless, practice shows that, except for particularly relevant cases, most cases are not submitted to a real debate within the section of the chamber as the judges will normally accept the Judge-Rapporteur's draft without real deliberation. In particularly relevant cases, both in fact or in law, deliberations might really take place⁴⁴². This determines that in very few cases formal dissenting opinions are issued. Dissenting

⁴³⁷ Constitutional Court, judgment of 21 December 2010, STC 142/2010, appeal 9208-2009.

⁴³⁸ The Constitutional Court concluded that, since the delay suffered is of a structural nature, anticipating the scheduling for the hearing requested by the plaintiff would potentially worsen the position of others, therefore, the granting of the protection was partial.

⁴³⁹ Art. 85.6 - 85.8 LJCA.

⁴⁴⁰ Art. 92.6 LJCA.

⁴⁴¹ A relevant exception is found in the cassation appeal in case no. 6480/2022, Supreme Court judgment 86/2024, STS 114/2024, ECLI:ES:TS:2024:114, on the return of minors to Morocco, in which an oral hearing was held.

⁴⁴² This also applies to Superior Courts of Justice who are competent on immigration cases. In Contentious- Administrative Courts (first instance in immigration cases) and the Contentious-Administrative Central Courts (appeals against inadmissibility decisions on asylum), there is no deliberation, since these are unipersonal organs.

opinions being exceptional are nevertheless more usual at the Supreme Court because of the high importance of the legal issues to consider when solving cassation appeals⁴⁴³.

F. Review of decisions

The review of decisions issued, on aliens and migration matters, by the Contentious-Administrative Courts is possible through the appeal procedure (*recurso de apelación*) before the contentious-administrative chamber of the *Tribunal Superior de Justicia*/Superior Court of Justice (art. 10.2 LJCA). A third instance review can take place through the cassation appeal or review (*recurso de casación*) before the *Tribunal Supremo*/Supreme Court, third chamber (contentious-administrative).

On asylum, decisions issued by the *Juzgados Centrales de lo Contencioso-Administrativo*/Central Contentious-administrative Courts regarding inadmissibility of international protection requests can be subject to an appeal procedure, heard by the Contentious-administrative Chamber of the *Audiencia Nacional*/National High Court⁴⁴⁴. A cassation appeal can be brought before the Supreme Court. Review of decisions issued by the contentious-administrative chamber of the *Audiencia Nacional*/National High Court against resolutions denying international protection requests is possible through cassation appeal before the *Supreme Court*⁴⁴⁵.

The judicial appeal or appeal procedure (*recurso de apelación*) is lodged by written notice before the Court who issued the challenged decision within the statutory time limit of 15 days, identifying the challenged pronouncements and the legal and factual merits of the appeal, such as errors of law (misinterpretation/misapplication of substantive or procedural norms), errors of fact based on the record, and procedural infringements causing defencelessness; new evidence is only exceptionally admissible (e.g., wrongly refused in first instance, impossible to submit earlier, or truly supervening). Once admitted, the first-instance Judge notifies the other litigants, who may file opposition briefs within 15 days. Once the opposition briefs are submitted or the time given has elapsed, the first-instance Judge elevates the record to the appellate Chamber, which opens a second-instance review focused on the issues raised.

As to processing under art. 85 LJCA, the appeal is handled primarily on the record, but the Court chamber may exceptionally take evidence when it is relevant, as noted above. In their appeal and opposition briefs, either party may request that the Court (i) hold a hearing, (ii) require written closings briefs (*conclusiones*), or (iii) declare the case concluded for judgment without further steps. If all parties request conclusions or if evidence has been taken on appeal, the Court clerk orders the filing of conclusions, and also sets the hearing date where a vista is granted. The Court chamber may likewise, *ex officio*, direct that a hearing be held or that written conclusions be submitted when the nature of the matter so requires. In practice, hearings or written closing briefs are rarely admitted by the courts and the appellate chamber directly decides once it receives the records from the first-instance judge.

The cassation review (*recurso de casación*) is an extraordinary remedy in the Spanish legal order, which does not open a full new-instance review. It only targets legal errors in judgments that qualify under art. 86 LJCA (e.g., appellate judgments, judgments of the Audiencia Nacional acting at only instance, and other cases defined by statute). Since the 2015 reform, admission hinges on demonstrating objective cassational interest -typically because the decision conflicts with Supreme Court case law, applies rules on which there is no settled doctrine, raises a legal question of general importance, or reveals case-law divergence among courts⁴⁴⁶. This narrow, non-plenary scrutiny markedly reduces the probability of success compared with an ordinary appeal. The appellant files the cassation – through a written statement of preparation (*escrito de preparación*) within 30 days since notification of the appellate decision- before the court that issued the

⁴⁴³ See, e.g., Supreme Court, judgment of 23 January 2020, appeal no. 61/2020, ECLI:ES:TS:2020:265, on the calculation of the deadline to resolve an asylum request at a CIE, which includes a dissenting opinion in which the magistrate highlights the asylum seeker's fraudulent conduct.

⁴⁴⁴ Art. 11.2 LJCA.

⁴⁴⁵ Art. 86.1 and 12.2.a) LJCA.

⁴⁴⁶ Arts. 88–90 LJCA.

impugned judgment, which forwards the record to the Supreme Court. If the Supreme Court admits the appeal, review is confined to the identified legal issues; there is no re-weighing of facts already fixed. A successful cassation may quash the judgment and resolve the legal question, often remitting the case so the lower court decides again in line with the Supreme Court's interpretation. Under art. 93.1 LJCA, the doctrine the Supreme Court sets when deciding cassation is binding for lower courts in substantially similar cases. Cassation does not stay enforcement automatically; any suspension must be specifically requested and granted.

Legal assistance by lawyer and court agent (*procurador*) is mandatory in judicial challenges before collegiate judicial organs, such as appeal and cassation procedures⁴⁴⁷.

Against the decisions of the Supreme Court, an appeal for the constitutional protection of fundamental rights (*recurso de amparo*) can be brought before the Constitutional Court.

The *recurso de amparo* protects against violations of the fundamental rights and freedoms enshrined in art. 14 to 29 of the Spanish Constitution, which may arise from provisions, legal acts, omissions, or mere *vías de hecho* of the public authorities of the State, the Autonomous Communities, and other territorial public entities, their officials, or agents⁴⁴⁸. Appeals may be lodged against legislative acts of the Spanish Parliament or the legislative assemblies of the Autonomous Communities, as well as acts, omissions, or *de facto* actions of the Executive, and even against judicial decisions.

To file an appeal for constitutional protection of fundamental rights, it is necessary to have exhausted all applicable judicial remedies. The deadline for filing is 20 days from the notification of the decision issued in the prior judicial proceedings⁴⁴⁹. In addition to the directly affected person, the Ombudsman and the Public Prosecutor's Office are entitled to file a *recurso de amparo*.

The appeal for constitutional protection begins with a petition or statement of claim, which must clearly and concisely set the facts on which it is based, refer to the constitutional provisions deemed to have been infringed, and precisely specify the protection sought to preserve or restore the right or freedom considered to have been violated. The appeal must be admitted for consideration by a decision adopted unanimously by the competent Section of the Constitutional Court, provided that the legal requirements are met and that a special constitutional significance is recognized, which refers to its importance for the interpretation of the Constitution, its application or its general effectiveness, and for determining the content and scope of fundamental rights.

Article 52 of the Organic Law of the Constitutional Court (LOTCC) establishes a procedure for reviewing the proceedings by the parties and, where applicable, an oral hearing, which is not mandatory. The Constitutional Court does not usually conduct evidentiary proceedings or reassess the facts, so oral hearings are not common, unless the complexity or unique nature of the case justifies it.

The filing of an appeal for constitutional protection does not suspend the effects of the challenged act or judgment, but its effects may be suspended, in whole or in part, when the execution of the challenged act or judgment would cause harm to the appellant that could render the appeal ineffective, provided that the suspension does not cause serious disruption to a constitutionally protected interest, nor to the fundamental rights or freedoms of another person⁴⁵⁰.

Implications of the functioning of judicial review mechanisms on asylum access adjudication

Under articles 93.1 and 88.3.b) LJCA, when the Supreme Court decides on a cassation appeal and sets doctrine on the interpretation of a legal norm, that doctrine must be followed by contentious-

⁴⁴⁷ Art. 23.2 LJCA.

⁴⁴⁸ Arts. 41 to 58 of *Ley Orgánica 2/1979, de 3 de octubre, del Tribunal Constitucional*, BOE no. 239, 5.10.1979 /Spanish Organic Law 2/1979 of the Constitutional Court, hereinafter LOTCC.

⁴⁴⁹ If the appeal is filed against legislative acts, the deadline is three months from the date the act becomes final; if the appeal is filed against a violation caused by the judicial decision itself, the deadline is 30 days from the date of notification.

⁴⁵⁰ Art. 52 LOTCC.

administrative courts when deciding future cases that are substantially similar unless they argue that the previous decision of the Supreme Court is wrong. In practice, this gives the Supreme Court's interpretative rulings a uniformity-oriented effect across the jurisdiction: lower courts are expected either to apply the stated doctrine or to offer a fully reasoned justification for any departure -failing which their judgments risk being overturned again in cassation.

Moreover, because Spain's contentious-administrative system operates pyramidally in practice, lower courts tend to apply the interpretations adopted by higher courts in their hierarchy even when those rulings constitute so-called "minor jurisprudence" (i.e., not Supreme Court case law). This *de facto* vertical guidance -whether from a chamber of the National High Court or a contentious-administrative chamber of a regional Superior Court of Justice- promotes uniformity and predictability, and, in most day-to-day litigation, leads first-instance judges to align with the prevailing line set by their immediate appellate courts unless there is a compelling reason to depart from it.

G. Procedures in decentralized states

Despite Spain's decentralized political structure, judicial organization and procedural law are the exclusive competence of the central State⁴⁵¹, and the judicial career is unitary nationwide under the Spanish Organic Law on the Judiciary and the General Council on the Judiciary⁴⁵². As a result, the contentious-administrative process, as regulated in the LJCA, uniformly applies across all regions: there is no regional procedural code, no autonomous judicial corps, and no territorially distinct practice for this jurisdiction. While substantive administrative law may vary because Autonomous Communities legislate within their powers⁴⁵³, the procedural framework, court structure, and routes of appeal in contentious-administrative matters remain the same throughout Spain.

H. Influence of procedures in practice and the role of courts

Among the cases examined through the elaboration of this National Report, there are many examples of judgments issued by Spanish courts and tribunals providing procedural protections to asylum seekers, such as, for instance, the protection against undue delays in scheduling a hearing in the abbreviated procedure against an asylum decision⁴⁵⁴; or the breach of the fundamental right to free legal assistance caused by not providing information on this right and the obligation to provide it even if the asylum seeker does not ask for it or rejects it⁴⁵⁵.

The jurisprudence of supranational courts, particularly the CJEU, has certainly shaped procedural protections and the interpretation of asylum seekers' rights in Spain. As already explained in Part 2 of this National Report, this is illustrated, for instance, on the suspension of the expulsion procedure from the moment the applicant expresses the intention to apply for asylum before any authority, including police officers, and not from the lodging and registration of the application⁴⁵⁶ (*C-36/20 PPU*); or on the right of the asylum applicant to remain in the territory while the judicial challenge against the decision rejecting the asylum application is being examined and the adoption of precautionary measures extending the benefits enjoyed by the applicant during the processing of the asylum application to the judicial action against its rejection⁴⁵⁷.

⁴⁵¹ Art. 149.1.5) and 6) of the Spanish Constitution.

⁴⁵² This is a constitutional collegiate, autonomous body, composed of judges and other jurists, who exercise government functions within the Spanish judiciary with a view to guarantee the independence of the judges during the exercise of the judicial function. See art. 122 of the Spanish Constitution.

⁴⁵³ This is however not the case of Spanish legislation on asylum and on migration, since these matters correspond to the exclusive competence of the State in accordance with art. 149.1.2) of the Spanish Constitution.

⁴⁵⁴ Constitutional Court, judgment of 21 December 2010, STC 142/2010, appeal 9208-2009.

⁴⁵⁵ Superior Court of Justice of Galicia, judgment of 25 May 2011, *appeal no. 675/2010*, ECLI:ES:TSJGAL:2011:4362; National High Court, judgment of 28 December 2017, *appeal no. 607/2016*, ECLI:ES:AN:2017:5389.

⁴⁵⁶ CJEU, case C-36/20 PPU, *VL/Ministerio Fiscal*, EU:C:2020:495.

⁴⁵⁷ CJEU, case C-808/18, *Commission v Hungary*, EU:C:2020:1029; C-81/16, *Gnandi*, EU:C:2018:465.

II. JUDICIAL BODIES IN ACCESS TO ASYLUM

A. Institutional configuration

According to the Spanish Constitution, an independent judiciary exercises judicial power through a unified system of courts and tribunals⁴⁵⁸. The ordinary judiciary is organised territorially and hierarchically, comprising first-instance and specialised courts, the Superior Courts of Justice of the Autonomous Communities, the National High Court and the Supreme Court.

The Spanish judicial system is organised into four jurisdictional orders: civil, criminal, contentious-administrative and social. As a general rule, judicial review concerning migration and asylum falls within the contentious-administrative jurisdiction⁴⁵⁹.

The General Council of the Judiciary (*Consejo General del Poder Judicial*, CGPJ) is the constitutional body responsible for safeguarding the independence of the judiciary and governing judges in matters such as appointments, promotions and disciplinary proceedings⁴⁶⁰.

In addition, the Constitutional Court stands outside the ordinary judiciary and is entrusted with reviewing the constitutionality of laws and hearing constitutional complaints (*recurso de amparo*), alleging violations of fundamental rights once ordinary judicial remedies have been exhausted.⁴⁶¹

- First instance judicial bodies:

Contentious-administrative Courts/*Juzgados de lo Contencioso-Administrativo* (immigration matters) and Contentious-administrative Central Courts/*Juzgados Centrales de lo Contencioso-Administrativo* (asylum inadmissibility) are unipersonal organs, conformed by a single judge. The National High Court/*Audiencia Nacional* (asylum rejection) is, on the contrary, a tribunal, a collegiate body composed of different chambers, the contentious-administrative chamber (conformed by eight sections) being the one competent to hear asylum cases.

- Second instance judicial bodies:

In addition to the National High Court, competent to hear appeal procedures against decisions issued by Contentious-administrative Central Courts, the Superior Courts of Justice / *Tribunales Superiores de Justicia* (one per Autonomous Community) and their respective contentious-administrative chambers, which are competent to hear appeal procedures against decisions by the Contentious-administrative Courts (immigration matters) are also collegiate judicial bodies.

- Third instance judicial body/bodies:

The Supreme Court / *Tribunal Supremo*, competent to hear cassation appeals, is also a collegiate body. Its Third Chamber (conformed by eight sections) deals with the contentious-administrative jurisdiction. Within the Third Chamber, the Fifth Section has jurisdiction over immigration matters, including nationality, international protection and statelessness⁴⁶². Appeals in cassation are, however, first examined by the First (Admissions) Section, which decides whether they should be admitted before being assigned to the competent adjudicating section.

⁴⁵⁸ Art. 117 of the Spanish Constitution. The organisation and functioning of the judiciary are further governed by the Organic Law 6/1985 of the Judiciary.

⁴⁵⁹ Art. 1 LJCA.

⁴⁶⁰ Art. 122 of the Spanish Constitution.

⁴⁶¹ Arts. 159-165 of the Spanish Constitution and Organic Law 9/1979 on the Constitutional Court, LOTC.

⁴⁶² *Acuerdo de 25 de noviembre de 2025, de la Comisión Permanente del Consejo General del Poder Judicial, por el que se publica el Acuerdo de 27 de octubre de 2025, de la Sala de Gobierno del Tribunal Supremo, sobre composición y funcionamiento de las Salas y Secciones del Tribunal Supremo y asignación de ponencias para el año judicial 2026*, BOE no. 294, 8.12.2025. The Fifth Section is also competent on cases concerning urban planning, environmental law, expropriation, State liability, authorisations and licences for commercial and industrial activities, and public property.

The Supreme Court, the National High Court, and Superior Courts of Justice, as collegiate bodies, are organized by their own governing chambers. Such chambers are chaired by the presidents of the court and composed of the presidents of each court's chamber plus an equal number of elected judicial members chosen by the members of the Court every five years through personal, free, equal, direct, and secret voting under an open-list system, with CGPJ convening and oversight powers—mechanisms that embed democratic self-government within the judiciary⁴⁶³. Such governing chambers ensure that judges themselves steer internal organization,⁴⁶⁴ as the chamber sets objective case-allocation rules and annual rotations (including the assignment of Judge Rapporteur), manages temporary composition needs, and exercises disciplinary, inspection and reporting powers –forming an *ex-ante*, rule-based shield against *ad hoc* interference⁴⁶⁵. Together, this composition, election and toolkit of governance powers operationalize judicial independence as internal autonomy by judges over their courts' workings⁴⁶⁶.

Power/competences of the judicial bodies responsible for asylum access adjudication

- First instance judicial body/ bodies / Second instance judicial body/ bodies:

Both first instance and second instance judicial bodies, when solving the contentious-administrative appeal against resolutions related to asylum applications⁴⁶⁷, are not limited to points of law, but can also assess the facts submitted by the applicant at the asylum procedure. If the relevant judicial body resolves favourably the appeal, it is empowered to grant protection status to the applicant instead of returning the case back to the Ministry of Interior. Consequently, on the basis of the principles of procedural economy and submission to the law, if the judicial body considers that the appeal must be upheld, it must proceed to resolve about the status of international protection if the appellant has so requested, as stated in art. 31.2 LJCA.

When the National High Court decides on an appeal procedure against decisions of Contentious-administrative Central Courts (resolutions on inadmissibility of asylum requests), decision-making follows the same rules.

In immigration cases, such as those appeals against expulsion, return or *devolución* orders, the powers of Contentious-administrative Courts and Superior Courts of Justice are similar, in the sense that they can exercise a full legality control of those administrative decisions, restoring legality *ex post*. Regarding the outcome of the judicial challenge, the administrative orders or resolutions may be declared unlawful and thus without effects, however courts cannot replace the administration by adopting a different decision or regularising the migratory status of the applicant. When the judicial challenge is directed towards a *de facto* administrative action (*vía de hecho*), as in the case of pushbacks, the Administration may be ordered to cease the action and take all necessary measures to restore legality, including, when appropriate, securing the return of the repatriated individuals back to Spanish territory.

- Third instance judicial body/ bodies:

The cassation review before the Supreme Court is limited to the identified legal issues; there is no re-weighing of facts already fixed⁴⁶⁸. The judgment of the Supreme Court shall establish the interpretation of those State or EU norms on which the ruling was considered necessary when admitting the case. In accordance with this interpretation and any other applicable norms, it shall resolve the issues and claims raised in the proceedings, either quashing the appealed judgment or order, in whole or in part, or upholding it. It may also, when justified, order the proceedings to be returned to a specific stage of the initial

⁴⁶³ Arts. 150-151 LOPJ.

⁴⁶⁴ Art. 149.1-3 LOPJ.

⁴⁶⁵ Art. 152.1.1°-14° LOPJ.

⁴⁶⁶ Arts. 149-152 LOPJ.

⁴⁶⁷ Before introducing a judicial appeal, an administrative appeal is possible against a negative resolution on the asylum claim. The *recurso de reposición* may be lodged – optionally- before the competent authority on the regular asylum procedure, the OAR, and it is based on points of law only and does not assess the facts.

⁴⁶⁸ Art. 87bis.1 LJCA.

proceedings so that they may follow the course prescribed by law until their conclusion, by remitting the case so the lower court decides again in line with the Supreme Court's interpretation⁴⁶⁹.

Implications of the available types of remedies on asylum access adjudication

As can be inferred from the information presented above, the types of remedies available in Spain may have implications for asylum access adjudication, as they shape both the distribution of powers among the actors involved and the intensity and effectiveness of judicial scrutiny. In asylum challenges, the contentious-administrative appeal allows courts to review both facts and law and, where the appeal is upheld, to directly recognise international protection, thereby limiting the administration's decisional monopoly. By contrast, in immigration enforcement cases (related to expulsion, return or *devolución*), judicial remedies are primarily limited to the annulment of administrative acts, confining judicial intervention to the restoration of legality *ex post*. This limitation is particularly evident in pushback practices. Judicial review is necessarily exercised after the removal has taken place and may lead to orders to cease the unlawful conduct and, where appropriate, to adopt measures aimed at restoring legality, including enabling the return of the affected individuals. However, the procedural guarantees inherent to access the asylum procedure cannot always be fully restored or reconstructed once the removal has already occurred, highlighting the structural limits of *ex post* remedies in border situations. At the third-instance level, cassation review before the Supreme Court is confined to legal issues and aims at ensuring uniform interpretation rather than re-examining individual cases, reinforcing its role as a standard-setting body.

B. Independence

The Spanish Constitution proclaims that justice emanates from the people and is administered by judges and magistrates who are independent and only subject to the imperium of law (art. 117.1) and thus not to any other state power. As personal guarantees of independence, judges cannot be separated, suspended, transferred or retired but on grounds and under safeguards legally foreseen (art. 117.2). Art. 127.2 of the Spanish Constitution also requires the observance of total independence of members of the judiciary, referring to legal provisions to establish their regime on incompatibilities, excluding therefore eventual interferences of the executive on the application of the organic statute of judges.

The Spanish Constitution creates the General Council on the Judiciary (*Consejo General del Poder Judicial*, CGPJ), to which the government of judges is entrusted, with the aim of safeguarding this independence. The CGPJ is competent on nominations, promotions, inspections and disciplinary rules of the judiciary, as established in the Organic Law on the Judiciary⁴⁷⁰. The LOPJ sets, in art. 12, that judges are independent in exercising their judicial authority, cannot be directed or corrected by higher courts except through legal appeals, and must not receive instructions, by the judicial governing organs or the CGPJ, on how to interpret or apply the law. The obligation to respect their independence is directed to all, public powers and individuals (art. 13 LOPJ) and the Public Prosecutor is entrusted with every action in defence of judicial independence (art. 14.2 LOPJ). More specifically, Title II of the LOPJ addresses this judicial independence, by regulating the security of their tenure (art. 378-388), the incompatibilities with other activities and prohibitions (art. 389-397), judicial immunity (art. 398-400), their regime of professional association (art. 401) and economic independence (art. 402-404bis).

It is true that, while the Spanish legal framework ensures judicial independence, delays in renewing the members of the CGPJ⁴⁷¹ led to a political crisis – solved in 2024 – and some reports have identified how

⁴⁶⁹ Art. 93.1 LJCA.

⁴⁷⁰ *Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*, BOE no. 157, 2 July 1985 / Organic Law 6/1985, of 1 July, on the Judiciary (LOPJ).

⁴⁷¹ According to art. 122.3 of the Spanish Constitution and the LOPJ, the CGPJ is composed of the President of the Supreme Court, who shall preside over the Council and 20 members appointed by the King for a five-year term. 12 of them shall be judges and magistrates from all judicial categories, elected by the Congress (6) and the Senate (6) by three-fifths majority, while the other 8 members will be elected from among lawyers and other legal professionals with recognized competence and having more than 15 years of professional experience, also nominated by the Congress (4) and the Senate (4), following the same majority. This system implies a clear politization of the CGPJ and the required majority obliges to an understanding between

this created institutional tensions affecting the perception of independence of the judiciary, though not the autonomy of individual judges. It is acknowledged that the process of appointing the judicial governing bodies is in need of reform in order to adapt it to European standards and avoid political influence⁴⁷².

Internal independence

As indicated above, art. 12 of the LOPJ proclaims judges and magistrates to be independent from all other judicial bodies and governing organs of the judiciary. It also establishes that judges and courts cannot correct the interpretation or application of the law made by lower courts, except when administering justice through appeals provided by law. It is explicitly set in this provision that nor judges and courts, their governing bodies or the GCPJ may issue general or specific instructions to lower courts on the interpretation or application of law in the exercise of their judicial functions.

According to art. 13 LOPJ, those judges and magistrates who may feel disturbed in their independence shall give notice to the CGPJ and give account of the facts to the competent court, without prejudice to apply the indispensable procedures to ensure justice and public order. As noted above, the Public Prosecutor is in charge of promoting actions in defence of judicial independence.

It should be highlighted that judicial independence is balanced by responsibility, since judges can be held liable for wilful misconduct (*prevaricación*), but not for their interpretation of the law made in good faith.

C. Centralization/decentralization

Judicial review on asylum matters is highly centralized in Spain, since the Contentious-administrative Central Courts (12 courts), competent to hear, in first instance, contentious-administrative appeals against resolutions on inadmissibility, and the National High Court, competent to hear in second instance appeals procedures against the latter and, in single instance, appeals against resolutions by the Ministry of Interior on the merits of asylum requests, are centralized courts, located in Madrid. The Supreme Court (cassation appeal) is also a centralized court.

The Contentious-administrative courts, competent to hear immigration-related cases⁴⁷³, are decentralized judicial organs from a territorial perspective, but their material competence on aliens and immigration matters is determined by state law. These are distributed over the whole national territory (one or several per province, or even per city). Superior Courts of Justice, competent to hear in second instance appeal procedures against decisions from the Contentious-administrative courts, are organized on a regional basis, with one Tribunal Superior de Justicia per Autonomous Community.

Implications of the centralization/decentralization of judicial bodies on asylum access adjudication

In Spain, the implications of the centralization/decentralization of judicial courts on asylum access adjudication cannot be adequately assessed, due to the lack of available studies directly addressing this issue. However, in general terms, it can be advanced that centralisation of judicial review of asylum in Spain, notably through the National High Court/*Audiencia Nacional*, may increase consistency of judgments and the accumulation of judicial expertise, as the concentration of similar cases may facilitate the development of *de facto* specialisation and experience in refugee law, enhancing uniformity and

the two main political parties in Spain, PSOE and PP, who in practice share out among them the places in the governing body of judges.

⁴⁷² See European Commission, “Commission Staff Working Document, 2023 Rule of Law Report, Country Chapter on the rule of law situation in Spain, SWD (2023) 809, 5.7.2023, available at https://commission.europa.eu/document/download/62fdb34b-78d4-4d53-b9ea-67286facc01e_en?filename=23_1_52576_coun_chap_spain_en.pdf . See subsequent reports from 2024 and 2025 for the evolution of the crisis and account for the agreement on the renewal of the CGPJ.

⁴⁷³ Expulsion and return orders adopted by Subdelegations of the Government, administrative sanctions on aliens, or internment measures on CIEs.

predictability of decisions. Nonetheless, centralization may also create risks on access to justice⁴⁷⁴, judicial caseloads and delays in providing judicial protection. If asylum judicial adjudication was decentralized through provincial contentious-administrative courts, it would nonetheless risk heterogeneous outcomes and uneven quality of judgments because of unequal resources, variable specialization and infrastructural disparities across territories. In the Spanish context, these considerations are particularly relevant insofar as decentralization applies to immigration cases. Because of geographical reasons, Contentious-administrative courts of Andalucía (Ceuta, Melilla and other provinces) and the Canary Islands hear most of the pushback cases in Spain, together with the corresponding Superior Court of Justice. However, it is not possible to determine whether this decentralized configuration has, in practice, led to either improved access to judicial protection or to greater fragmentation of judicial standards of control.

D. Specialization

Institutional specialization on asylum

Spanish courts which examine judicial appeals on asylum are not specialized in the sense that they are generalist courts that hear asylum appeals within the contentious-administrative jurisdiction, without being exclusively and organically competent on asylum, such as the Contentious-administrative Central Courts (asylum inadmissibility), National High Court (asylum rejection and appeals on admissibility) and the Supreme Court (cassation appeals).

There is however some *de facto* specialization due to experience and training, as in the case of the National High Court/ *Audiencia Nacional*, which is competent on most of asylum adjudication in Spain. The chamber responsible for asylum cases is the contentious-administrative chamber which is composed of several sections. Asylum cases are not systematically assigned to a specific section, but the general order of distribution applies⁴⁷⁵.

As confirmed by agreement of the permanent commission of the CGPJ⁴⁷⁶, appeals concerning asylum and statelessness are distributed among all sections of the *Audiencia Nacional*. The distribution is carried out on a monthly basis for each section, with each section receiving the appeals registered in the corresponding calendar month⁴⁷⁷. As an exception, appeals against judgments and orders of the Central Contentious-Administrative Courts concerning the inadmissibility of asylum applications are assigned to section 4 of the Contentious-administrative Chamber.

⁴⁷⁴ Physical presence of the applicant, the lawyer and the court agent is not however necessary to introduce judicial challenges in Spain (only if a hearing is convened).

⁴⁷⁵ CGPJ, “El CGPJ solicita a Justicia que autorice el refuerzo de la Sala de lo Contencioso-Administrativo de la Audiencia Nacional para hacer frente a la avalancha de asuntos de asilo y refugio”, 7 April 2022, available at <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPJ-solicita-a-Justicia-que-autorice-el-refuerzo-de-la-Sala-de-lo-Contencioso-Administrativo-de-la-Audiencia-Nacional-para-hacer-frente-a-la-avalancha-de-asuntos-de-asilo-y-refugio> In February 2024, the request for reinforcement measures was reiterated by the President of the contentious-administrative chamber of the National High Court: Acuerdo de la Sala de Gobierno de la Audiencia Nacional, Acta nº 869, available at <https://www.poderjudicial.es/stfls/AUDIENCIA%20NACIONAL/ACUERDOS%20SALA%20GOBIERNO/20240527%20Acuerdos%20de%20la%20Sala%20de%20Gobierno%20de%20la%20Audiencia%20Nacional.pdf>

⁴⁷⁶ Acuerdo de 10 de diciembre de 2024, de la Comisión Permanente del Consejo General del Poder Judicial, por el que se publica el Acuerdo de 18 de noviembre de 2024, de la Sala de Gobierno de la Audiencia Nacional, sobre composición y funcionamiento de las Salas de lo Contencioso-administrativo, de lo Penal, de lo Social y de Apelación, y sobre asignación de ponencias que deben turnar los magistrados para su aplicación a partir del 1 de enero de 2025 (https://www.boe.es/diario_boe/txt.php?id=BOE-A-2025-211). The same rules were set, as far as asylum is concerned, in the Agreement of 21 January 2021 of the permanent commission of the CGPJ, <https://www.boe.es/buscar/doc.php?id=BOE-A-2021-2942>

⁴⁷⁷ These appeals also include appeals against administrative inaction regarding the request submitted to the Asylum and Refuge Office, for the appellant to be registered as an applicant for international protection; appeals regarding administrative inaction (Ministry of the Interior) due to the lack of response to the request for an appointment to formalize the application for international protection; and appeals against decisions of Spanish Ambassadors regarding asylum seekers and their transfer to Spain.

In April 2022, the CGPJ requested the necessary financial authorization from the Ministry of Justice to reinforce the contentious-administrative chamber of the National High Court to address the increase in asylum cases and reduce the backlog in the administration of justice in this area. It proposed doing so by increasing the workload of eight magistrates within the Chamber itself, who would form one or two sections dedicated exclusively to asylum, or, alternatively, through temporary assignments of judges from other chambers. It also requested additional staff in the Chamber's secretariat to handle the processing of cases.

Although asylum applications in Spain are mostly submitted, per autonomous communities, in Madrid, Andalusia and Catalonia⁴⁷⁸, judicial centralization of asylum adjudication explains that *de facto* specialization is not dependent on particular exposure to asylum cases in specific provinces or particular borders. It is however true that other provincial or regional-based courts in Spain may have to consider aspects related to access to asylum when hearing immigration cases – that is, appeals against orders of *devolución*, return or expulsion - on which they are competent⁴⁷⁹. In that regard, we may consider that Superior Courts of Justice corresponding to autonomous communities in which exposure to this kind of cases is higher would have acquired a *de facto* specialization on certain asylum-related aspects. This would be the case, for instance, of the Superior Court of Justice of the Canary and Balearic Islands, Murcia, Catalonia, Andalusia and Madrid⁴⁸⁰.

Specialized training in asylum

There is evidence of materials for specialized training on asylum matters for judges, mainly produced at European level (e.g. EASO⁴⁸¹ and Council of Europe⁴⁸²). Continuous training is also provided at national level⁴⁸³, but no information or concrete details have been found on the organization and programmes on specific courses on asylum issues.

E. Human resources

Profile of the group of adjudicators

Internal reports issued by the Spanish General Council of the Judiciary (CGPJ), particularly the annual report on the Demographic Structure of the Judicial Career⁴⁸⁴, provide relevant information on the profile and background of judges assigned to the contentious-administrative branch of the Spanish judiciary. According to the 2025 report, more than 50% of the judges in *Juzgados Centrales de lo Contencioso-*

⁴⁷⁸ La Moncloa, “The Office for Asylum and Refugees resolves 96,251 international protection cases in 2024, 4.2 per cent more than in 2023”, 16 January 2025, available at <https://www.lamoncloa.gob.es/lang/en/gobierno/news/paginas/2025/20250116-international-protection.aspx?utm>

⁴⁷⁹ See, as an illustration, the case of a judgement from the Superior Court of Justice of the Canary Islands establishing that the execution of an order of *devolución* the day after the rejection of an asylum request was notified (on the occasion of the applicant presenting himself at the police station to renew its asylum request) did not respect the right to appeal the decision rejecting its asylum application and the right to request precautionary measures: Tribunal Superior de Justicia de Canarias, judgment of 23 July 2025, appeal no. 5774/2024, ES:TSJICAN:2025:2491.

⁴⁸⁰ Although these are not absolute but relative numbers, the highest percentage of immigration cases filed in 2024 with regard to total number of cases correspond to Canary Islands (59,8%), Balearic Islands (43,3%), Murcia (36,5%), Catalonia (32,6%) and Andalusia (32,2%): CGPJ, “La justicia dato a dato. Año 2024. Estadística Judicial”, available at https://www.poderjudicial.es/portal/site/cgpi/menuitem.52faf2c47434aea9ace1b3d7c684caa0/?vgnextoid=2d58e95785108510VgnVCM1000006f48ac0aRCRD&vgnextfmt=default&vgnextlocale=en&perfil=0&lang_chosen=en

⁴⁸¹ EASO, “Análisis judicial. Introducción al sistema europeo común de asilo para órganos jurisdiccionales”, August 2016, available at https://euaa.europa.eu/sites/default/files/publications/easo-introduction-to-ceas-ja_es.pdf

⁴⁸² “Council of Europe launches training for legal professionals on refugee and migrant children in Spain”, 23 November 2018, available at <https://www.coe.int/en/web/help/-/council-of-europe-launches-training-for-legal-professionals-on-refugee-and-migrant-children-in-spain>

⁴⁸³ The Judicial School (Escuela Judicial) of the Spanish General Council of the Judiciary (CGPJ) also facilitates continuous training to Spanish judges, including on migration and fundamental rights matters: <https://www.poderjudicial.es/cgpi/es/Temas/Escuela-Judicial/>

⁴⁸⁴ Available at: <https://www.poderjudicial.es/cgpi/es/Temas/Estadistica-Judicial/Estudios-e-Informes/Estructura-demografica-de-la-Carrera-Judicial/>

Administrativo / Contentious-administrative Central Courts (asylum inadmissibility) and *Juzgados de lo Contencioso-Administrativo* / Contentious-administrative Courts (immigration matters) are women, while at the *Audiencia Nacional* / National High Court (asylum rejection) 41.5% of the judges are women. On second instance, at the *Tribunales Superiores de Justicia* / Superior Courts of Justice (one per Autonomous Community) 42.9% of judges are also women. However, at the Supreme Court only 19.6% of Judges are women.

These data are consistent with the general structure of the Spanish judicial career as most of new judges are women (under 30 year of age, 69.4% of the Spanish judges are women), so that in first instance courts most of judges are women, while on the high courts (such as Supreme Court) the percentage is lower due to age and seniority (while 58.2% of all Spanish Judges are women, women judges over 60 years of age are only 41.2% of the total amount of judges of such age).

As asylum matters are handled by the Contentious-administrative branch of the Spanish judiciary, all judges have specific formation in public law matters, although not necessarily on immigration and asylum law.

All members of these courts are professional judges.

Selection and appointment

Appointments of judges for any Spanish court are ruled by the LOPJ and supervised by the General Council of the Judiciary (CGPJ). According to the applicable regulations, *Juzgados Centrales de lo Contencioso-Administrativo* / Contentious-administrative Central Courts (asylum inadmissibility) and *Juzgados de lo Contencioso-Administrativo* / Contentious-administrative Courts (immigration matters) are staffed by career judges and magistrates through the national transfer system under LOPJ, with seniority-based resolution within the judges unless a specific legal preference applies.

Also seats in Superior Courts of Justice/*Tribunales Superiores de Justicia* and in the National High Court/*Audiencia Nacional* are provisioned under LOPJ rules that prioritize specialists in the contentious-administrative branch; failing that, those with more years of service in the branch; and failing both, best seniority (*escalafón*).

The Supreme Court vacancies are also ruled by law and decided on merits by the CGPJ.

Clerks, or experts supporting the adjudication function

Judges hearing asylum cases are not assisted by individual judicial law clerks or other specialised experts supporting the adjudication function. *Letrados de la Administración de Justicia* are senior court officials responsible for the procedural management of cases and the organisation of the Judicial Office. Their functions include the authentication of judicial acts, the adoption of certain procedural decisions, the management of proceedings and the enforcement of judgments, but they do not provide legal advice to judges or assist them in the examination of cases or the drafting of judgments.

At the Supreme Court, the Technical Office (*Gabinete Técnico*) provides institutional legal support to the Presidency and the Chambers, particularly in relation to the admission of cassation appeals, and by preparing legal studies and reports⁴⁸⁵. However, the examination of individual cases, legal research and the drafting of judgments are carried out personally by the reporting judge (*juez ponente*), whose draft is subsequently submitted to the other members of the panel for deliberation. By contrast, the Constitutional Court is assisted by its own corps of legal advisers (*Letrados del Tribunal Constitucional*), who perform legal research and advisory functions for the judges and may be assigned to individual ones as collaborators, according to the Organic Law of the Constitutional Court and its Rules of Organisation⁴⁸⁶.

⁴⁸⁵ Art. 61 *bis* of the LOPJ.

⁴⁸⁶ Art. 97 of LOTC and art. 44 of the *Acuerdo de 5 de julio de 1990, del Pleno del Tribunal Constitucional, por el que se aprueba el Reglamento de Organización y Personal del Tribunal Constitucional*, BOE no. 185, 3.08.1990 / Resolution of 5 July 1990 of the Plenary of the Constitutional Court approving the Rules of Organisation and Personnel of the Constitutional Court.

Interpretation service

In Spanish courts, the use of interpreters is legally guaranteed to safeguard the rights of defendants and victims and to prevent any risk of lack of defense. The LOPJ sets the language regime -Spanish is the language of judicial proceedings; the co-official language of the Autonomous Community may also be used in the absence of prejudice (art. 231)- and expressly provides that interpreters (including sign-language interpreters) must be engaged in accordance with the applicable procedural law.

Quality and availability of human resources

The Spanish General Council of the Judiciary (CGPJ) requested, in April 2022, the necessary financial authorization from the Ministry of Justice to reinforce the contentious-administrative chamber of the National High Court to address the increase in asylum cases and reduce the backlog in the administration of justice in this area. It proposed increasing the workload of eight magistrates within the Chamber itself, who would form one or two sections dedicated exclusively to asylum, or, alternatively, through temporary assignments of judges from other chambers. Additional staff in the Chamber's secretariat to handle the processing of cases was also requested⁴⁸⁷. In February 2024, the request for reinforcement measures was reiterated by the President of the contentious-administrative chamber of the National High Court⁴⁸⁸.

In general terms, according to data from the Council of Europe (CEPEJ), in 2023 Spain had a significantly lower number of professional judges per 100,000 inhabitants (11.1) than the EU average (21.5), which might provide a macro-level comparative explanation for the structural pressure experienced by certain jurisdictions - such as the contentious-administrative sections of the *Audiencia Nacional* - during peaks in asylum litigation⁴⁸⁹.

F. Tools supporting adjudication

Key organizational tools supporting asylum adjudication

Spanish courts are legally required to use electronic and telematic means regarding the submission of documents and hearings. Article 230 of LOPJ mandates courts, public prosecutors and judicial offices to employ available electronic, IT and telematic tools. Hearings are recorded. The general framework for the use of TICs was initially set by Law 18/2011 on ICT in the administration of justice, and is nowadays ruled by Royal Decree-Law 6/2023, of 19 December, approving urgent measures for the implementation of the Recovery, Transformation and Resilience Plan in matters concerning the public service of justice, the civil service, the local government regime, and patronage⁴⁹⁰. The Royal Decree-Law establishes a comprehensive framework for the digital operation of the Spanish justice system. It provides for the electronic processing of judicial proceedings, regulates remote judicial hearings while maintaining exceptions requiring in-person attendance, requires electronic communications for users legally obliged to interact electronically with the Administration of Justice. It also creates a range of digital services for the administration of justice, including the Electronic Judicial File (*Expediente Judicial Electrónico*), the Electronic Judicial Headquarters (*Sedes Judiciales Electrónicas*) and the Justice Folder (*Carpeta Justicia*). These tools enable

⁴⁸⁷ CGPJ, "El CGPJ solicita a Justicia que autorice el refuerzo de la Sala de lo Contencioso-Administrativo de la Audiencia Nacional para hacer frente a la avalancha de asuntos de asilo y refugio", 7 April 2022, available at <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPJ-solicita-a-Justicia-que-autorice-el-refuerzo-de-la-Sala-de-lo-Contencioso-Administrativo-de-la-Audiencia-Nacional-para-hacer-frente-a-la-avalancha-de-asuntos-de-asilo-y-refugio>

⁴⁸⁸ Acuerdo de la Sala de Gobierno de la Audiencia Nacional, Acta nº 869, available at <https://www.poderjudicial.es/stfls/AUDIENCIA%20NACIONAL/ACUERDOS%20SALA%20GOBIERNO/20240527/%20Acuerdos%20de%20la%20Sala%20de%20Gobierno%20de%20la%20Audiencia%20Nacional.pdf>

⁴⁸⁹ European Commission for the efficiency of justice (CEPEJ), CEPEJ Study on the judicial systems in the EU Member States - Country fiche, available at <https://tm.coe.int/cepej-country-fiche-scoreboard-spain-2023/1680b6abe6>

⁴⁹⁰ *Real Decreto-ley 6/2023, de 19 de diciembre, por el que se aprueban medidas urgentes para la ejecución del Plan de Recuperación, Transformación y Resiliencia en materia de servicio público de justicia, función pública, régimen local y mecenazgo.*

the electronic management of judicial proceedings, facilitate electronic interaction between courts, legal professionals and users, and improve the accessibility, efficiency and interoperability of the justice system.

Functioning, role, and implementation of IT tools

Regarding the use of IT tools in Spanish courts, writing assistance tools enjoys a deployment and usage rate of 95-100% in the administrative jurisdiction. Features of writing assistance tools include templates, automatically generated text, speech-to-text, and electronic signature. Automatically suggested decision is not resorted to. Recording of court hearings also enjoys a deployment and usage rate of 95-100% in the administrative jurisdiction. Functionalities of recording include audio recording, video recording, systematic recording for all hearings, automatically indexed recording, automatic transcript from recording and possibility to request a copy of the recording⁴⁹¹.

Implications of organizational tools (especially IT tools) in asylum access adjudication

No specific information has been identified on the implications of organisational or IT tools for asylum adjudication in Spain. More generally, however, it has been argued that the digitalisation of the justice system has the potential to improve efficiency, transparency and access to justice, while warning that these benefits depend on adequate investment in technological infrastructure, interoperability between judicial information systems, continuous training of judicial operators in the use of digital tools, and the accessibility and security of those systems⁴⁹². Otherwise, the fragmented implementation of digital justice may generate new forms of inequality and hinder effective access to justice. Although these considerations are not specifically addressed in relation to asylum proceedings, they may be particularly relevant for migrants and asylum seekers, who may face additional linguistic, socio-economic or digital barriers when accessing judicial remedies and digital justice services. In addition, the Madrid Bar Association, the ICAM, has reported practical shortcomings in the implementation of the Electronic Judicial File, including unequal access to electronic case files among legal actors, interoperability problems between judicial IT systems and territorial disparities, warning that these deficiencies may undermine the right of defence and equality of arms in judicial proceedings⁴⁹³.

G. Caseload and delays

Caseload of judicial bodies responsible for asylum access adjudication

As far as asylum adjudication is concerned and focusing on the National High Court/*Audiencia Nacional*, for which data, albeit quite limited, is available, the contentious-administrative chamber of the National High Court registered in 2021 a total of 9,146 new cases related to asylum and refugee status, representing an increase of 812% compared to 2020 and 711% compared to 2019. Added to cases related to other matters, these have caused a significant increase in the backlog of pending cases, which as of December 31, 2021, totalled 29,096, representing an average of 3,637 cases per section and 709.6 cases per judge, a workload well above the established indicator for this body⁴⁹⁴.

Data as of 31 December 2023 goes in the same direction, since the President of the contentious-administrative chamber of the National High Court reiterated the request for reinforcement measures to reduce the Court's backlog on asylum. At that date, 5,567 asylum cases were concluded and pending only

⁴⁹¹ Information available at CEPEJ Study on the judicial systems in the EU Member States - Country fiche, <https://rm.coe.int/cepej-country-fiche-scoreboard-spain-2023/1680b6abef6>

⁴⁹² Fierro Rodríguez, D., "El despotismo informático en la Administración de Justicia", *Acta Judicial*, 13, 2024, pp. 29-64.

⁴⁹³ Cinco Días, "El ICAM denuncia fallos en el expediente judicial electrónico y reclama igualdad de acceso a la justicia digital", 3 February 2025, available at <https://cincodias.elpais.com/legal/2025-02-03/el-icam-denuncia-fallos-en-el-expediente-judicial-electronico-y-reclama-igualdad-de-acceso-a-la-justicia-digital.html>

⁴⁹⁴ CGPJ, "El CGPJ solicita a Justicia que autorice el refuerzo de la Sala de lo Contencioso-Administrativo de la Audiencia Nacional para hacer frente a la avalancha de asuntos de asilo y refugio", 7 April 2022, available at <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPJ-solicita-a-Justicia-que-autorice-el-refuerzo-de-la-Sala-de-lo-Contencioso-Administrativo-de-la-Audiencia-Nacional-para-hacer-frente-a-la-avalancha-de-asuntos-de-asilo-y-refugio>

deliberation, voting and judgment⁴⁹⁵. The high backlog in asylum and refugee matters has been highlighted by the Spanish Ombudsman, who has also called for the adoption of reinforcement measures⁴⁹⁶.

No regular data can however be found, which impedes an accurate comparison and assessment of the evolution of backlog in asylum adjudication in Spain.

The Ministry of Interior - OAR annually publishes data on the number of judicial challenges favourably solved or dismissed on asylum matters; information does not appear however comparable. For instance, in 2023, 3.329 judicial challenges on asylum were dismissed, while 36 challenges were granted. No information is provided on the total number of judicial actions introduced or judicial procedures pending⁴⁹⁷. Exceptionally, the OAR report of activities from 2022 provided data on the proportion of appeals granted or dismissed. According to the OAR and contrary to the trend observed in previous years, in 2022 there was a notable decrease in appeals filed, both administrative and judicial, compared to 2021 (by 17.2% and 35.1%, respectively). However, it is stated that, despite this clear reduction, the upward trend that began in 2017 continues and will likely persist in parallel with the increasing number of decisions issued. According to OAR, the clear reduction of litigation on asylum in 2022 reflects a decreasing applicants' dissatisfaction with the outcome of the actions of the OAR, noting that, during the period 2014-2022, out of a total of 389,402 decisions, litigation accounted for 9.5% of administrative appeals and 8.3% of judicial appeals. Interestingly, OAR highlights that the high degree of agreement or support for the decisions adopted in both administrative and judicial appeals is a good indicator of the quality of the OAR's work, as 81.1% of the appeals resolved were dismissed⁴⁹⁸, without considering other factors that might cause the low numbers of judicial appeals introduced by applicants.

Implications of caseload on asylum access adjudication

No specific reports have been found on the effects of judicial caseload on asylum adjudication in Spain. However, it can be inferred that high caseloads affect asylum adjudication not only through delays or the accumulation of pending cases, but also by placing pressure on the adjudicatory capacity of courts. An excessive volume of cases relative to available human resources may reduce the time and attention devoted to each file, increase reliance on standardised reasoning, and limit the depth of individualised assessment. In asylum procedures, where credibility assessment and the identification of vulnerabilities are central, such structural pressures may have implications for the quality of justice and the effectiveness of judicial protection.

Delays and backlogs characterizing judicial bodies responsible for asylum access adjudication

Under the law on the contentious-administrative jurisdiction, Spanish courts are required to deliver judgments within ten days once proceedings are ready for decision or, in abbreviated proceedings, within ten days from the hearing⁴⁹⁹. These time limits apply equally to Contentious-administrative Courts, Contentious-administrative Central Courts, Superior Courts of Justice and the National High Court. However, Spanish law does not attach automatic legal consequences to the failure to comply with these deadlines. Their breach does not invalidate the judgment nor result in any form of judicial silence, as the deadlines are considered organisational rather than peremptory. Delays may give rise to complaints

⁴⁹⁵ Acuerdo de la Sala de Gobierno de la Audiencia Nacional, Acta nº 869, 27 May 2024, available at <https://www.poderjudicial.es/stfls/AUDIENCIA%20NACIONAL/ACUERDOS%20SALA%20GOBIERNO/20240527%20Acuerdos%20de%20la%20Sala%20de%20Gobierno%20de%20la%20Audiencia%20Nacional.pdf>

⁴⁹⁶ Spanish Ombudsman, Resolution of 3 October 2025, in response to complaint no. 24005667, available at https://www.defensordelpueblo.es/wp-content/uploads/resolucion/2025/POST_016148_20251003.pdf

⁴⁹⁷ Ministerio del Interior, *Asilo en cifras*, available at <https://www.interior.gob.es/opencms/gl/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones/publicaciones-descargables/publicaciones-periodicas-anuarios-y-revistas/asilo-en-cifras/>

⁴⁹⁸ Subdirección General de Protección Internacional, OAR, Informe de Actividad 2022, available at https://proteccion-asilo.interior.gob.es/documentos/Informe_actividad_OAR_2022.pdf, p. 26 and 27.

⁴⁹⁹ Art. 67 and 78(20) LJCA, respectively.

concerning undue delay under the right to effective judicial protection of art. 24 of the Constitution, without affecting the validity of the judicial decision.

In practice, the average time for ruling on asylum challenges extends from one to two years, even closer to two years⁵⁰⁰. In 2023, according to the CGPJ's official dashboard on estimated durations, asylum and refugee cases before the National High Court had an estimated average duration of 24.8 months, while the estimated average duration for contentious-administrative cases in general was 19.1 months that year⁵⁰¹.

Regarding judicial actions before the Contentious-administrative Courts (immigration cases at first instance) and Contentious-administrative Central Courts (inadmissibility of asylum requests), processed through the abbreviated procedure, the same rule applies, judgment shall be delivered within ten days from the hearing⁵⁰². However, as no peremptory deadline is set by law regarding the holding of hearings and other intermediate procedural steps, judicial procedures of this kind may also delay considerably⁵⁰³. We have already noted how the Spanish Constitutional Court upheld the appeal for constitutional protection of fundamental rights to an asylum seeker because of undue delays in scheduling the hearing at the judicial appeal against the resolution rejecting the asylum request as inadmissible⁵⁰⁴. The Court concluded that delays resulting from structural or organizational deficiencies in the judicial bodies or their overwhelming workload do not alter their unjustified nature⁵⁰⁵.

Implications of backlog and delays in asylum access adjudication

Delays and backlogs in asylum litigation may affect access to justice, procedural fairness, and the practical enjoyment of rights. Particularly serious are the complications this raises regarding documentation, access to reception conditions and rights to which asylum seekers are entitled during the whole asylum procedure and its judicial review⁵⁰⁶. As also explained, asylum seekers may prefer to abandon the procedure and submit a new asylum request. It is true that additional time may facilitate documentation gathering, but excessive delays can also harm evidence (loss of documents, difficulties maintaining contact, deteriorating psychological health affecting testimony, etc.). Delays may also affect the sustainability of legal representation, as it complicates follow-up work for legal counsels.

H. Influence of judicial or quasi-judicial bodies on access to asylum

Impact of case law in the field of asylum access adjudication on legislation

On the basis of the analysis undertaken in Part 2 of this National Report, it can be stated that Spanish case-law on access to asylum has had a limited direct impact on legislative change in Spain. Rather than acting as a catalyst for reform, judicial decisions have in some instances been shaped by ongoing or prospective legislative developments, which courts have taken into account when assessing the legality of contested administrative practices. This dynamic is, for instance, illustrated by the cases concerning the attempts to cross the Melilla border fences in 2014, in which the judicial assessment explicitly referred to the parliamentary processing of the legislative reform on the special regime of border rejections in Ceuta

⁵⁰⁰ AIDA/ECRE, Country Report Spain, 2024 - Update 2025, p. 61.

⁵⁰¹ CGPJ, "Estimation of the Average Duration of Court Proceedings - Audiencia Nacional", available [here](#). The average for the Supreme Court was 9.1 months for the contentious-administrative jurisdiction, but no specific information on asylum cases is available [here](#).

⁵⁰² Art. 78.20 LJCA.

⁵⁰³ According to CGPJ data from 2023, the estimated average duration of Contentious-administrative Courts' procedures was 6.3 months regarding immigration cases, and 8.8 months for abbreviated procedures (see [here](#)); while, in the case of Contentious-administrative Central Courts, the average for asylum in 2023 was 2.4 months and 4.8 months for abbreviated procedures (see [here](#)).

⁵⁰⁴ The appeal had been brought before the Central Contentious-Administrative Court on 28 July 2009 and the Court, through an order of 30 July 2009, set the hearing for 15 February 2011.

⁵⁰⁵ Constitutional Court, judgment of 21 December 2010, STC 142/2010, appeal 9208-2009.

⁵⁰⁶ See section I.A above in current Part 3 of this National Report.

and Melilla as a relevant element for interpreting and evaluating the lawfulness of the operational concept of borders used by the Government.

Case-law on pushbacks has not certainly prompted broader legislative action. After the Constitutional Court judgement of 2020 on the constitutionality of the 2015 legislative provision on the special regime for border rejections in Ceuta and Melilla, the Spanish Ombudsman issued in 2022 a recommendation for the urgent development of the procedure established in the 10th additional provision of the Law on Aliens in conformity with the interpretation provided by the Constitutional Court in that judgment. However, no specific procedure has so far been adopted for the implementation of this legislative provision. Another field in which this can be illustrated relates to access to asylum through diplomatic missions. Despite clear judicial clarification by the Supreme Court regarding the scope and direct applicability of article 38 of Law 12/2009 on transfers from diplomatic missions, pending legislative proposals in this area have not yet resulted in any legal change. Overall, Spanish case-law appears to have played a secondary and largely reactive role in shaping asylum-related legislation.

It may further be observed that Spanish case law, particularly in relation to procedural barriers, has addressed shortcomings and gaps in the domestic asylum framework resulting from the lack of transposition of EU asylum directives, notably through their direct application and reliance on CJEU case law. However, this judicial intervention has not led to corresponding legislative action by the Spanish Government. The systematic judicial correction of these deficiencies might have reduced the institutional pressure to undertake comprehensive legislative reform.

Impact of case law in the field of asylum access adjudication on asylum policies

On the basis of the analysis undertaken in Part 2 of this National Report, it can be observed that the influence of Spanish case-law on border control and the asylum system in Spain has been indirect and selective, contributing to the consolidation of certain policy orientations rather than to formal legal reform. Judicial endorsement of Spanish conduct in specific contexts has been followed by the continuation of policy approaches aimed at managing migration and asylum outside Spanish territory, particularly in relation to border control and maritime operations. The *Marine I* case constitutes a relevant illustration, as the favourable assessment adopted by the Supreme Court was followed by subsequent operational scenarios reflecting a similar policy logic, including attempts to disembark rescued persons in third countries in order to avoid activating domestic asylum procedures.

Jurisprudence clarifying alternative legal pathways to asylum has not resulted in a comparable policy shift. Despite judicial clarification on the applicability of article 38 of Law 12/2009 as discussed above, access to asylum via diplomatic missions has not been integrated as a meaningful component of Spanish asylum policy.

Impact of case law in the field of asylum access adjudication on executive practices

On the basis of the analysis undertaken in Part 2 of this National Report, it may be argued that the impact of Spanish case-law on executive practices affecting access to asylum has been uneven and, in several areas, limited, particularly with regard to the persistence of pushbacks and procedural barriers. Although judicial decisions, including constitutional case-law, have clarified the conditions under which restrictive measures must comply with human rights standards, these standards have not always been consistently reflected in administrative practice. This gap is illustrated by the continued use of hot pushbacks at the Ceuta and Melilla borders without individualised procedures, identification of vulnerable persons or effective access to asylum, despite the guidance provided by the Constitutional Court to this effect.

Spanish courts have also addressed procedural barriers to asylum and, by drawing extensively on CJEU case-law, have played a crucial role in filling gaps resulting from the lack of transposition of CEAS second-stage EU asylum directives in Spain, as discussed above. Through judicial interpretation, procedural guarantees and access-related rights have been clarified in the absence of legislative guidance. While this has strengthened protection in individual cases, it has also meant that barriers to asylum access have been

addressed primarily through litigation rather than through structural executive or legislative action, and that judicial clarification has not consistently prompted the completion of transposition or the adoption of implementing measures by the Spanish executive.

I. Judicialization of politics

There is not a high degree of conflictivity between the executive and the judiciary in Spain over access to asylum. Spanish case-law may be at odds with the position defended by certain government's actions, but it is not usual to see public reactions against those judgements. The position of the judiciary has not been very critical to one of the most blatant violations of human rights by the Spanish executive in access to asylum, the hot pushbacks at the Ceuta and Melilla borders with Morocco. As explained in Part 2 of this National Report, both the European Court of Human Rights and the Spanish Constitutional Court were, at least formally, favourable to the Spanish Government's position, endorsing not only its actions but also their legalisation in the Organic Law on Citizen Security.

A more open conflict has recently arisen regarding responsibility over unaccompanied minors in the Canary Island who request or wish to request asylum. In March 2025, the Supreme Court gave ten days to the central government to assume responsibility over a thousand minors under the Canary Islands regional protection system⁵⁰⁷. This institutional clash between the central and the autonomous governments arises from a competence dispute: while regional governments in Spain are responsible for attention and care of unaccompanied foreign minors, the Spanish central government is legally responsible, under the Spanish Asylum Act, for their reception once they apply for international protection. The Supreme Court's intervention, responding to a request of precautionary measures by the Canary government unable to host those minors in decent conditions, thus seeks to ensure that the central government fulfils its obligations to guarantee access to the asylum system and the protection owed to these particularly vulnerable minors. The inaction of the Government was qualified by the Supreme Court, in October 2025, as unacceptable⁵⁰⁸; the Court gave to the Government a new ultimatum of 15 days to execute its previous order to include these minors under the national reception system for international protection⁵⁰⁹.

Nonetheless, this might evidence a lack of effective enforcement of judicial decisions by the executive, but does not appear to respond to the concept of "judicialization of politics" employed in this Report.

Restriction or expansion of the jurisdiction or competence

The Spanish government plans to propose a new law on asylum in Spain, necessary to replace Law 12/2009 which has not been adapted to EU directives on asylum nor developed through a regulation, as explained in Part 2 of this National Report. Apparently, this new law, aimed at implementing the legislation resulting from the New Pact on Migration and Asylum in Spain, would restrict the right to asylum⁵¹⁰. As it was also explained, the new regulation on aliens impedes asylum seekers to access "*arraigo*", since time spent as asylum seekers will not count for regularisation on the basis of established ties in Spain.

These reforms do not affect judicial competences, but eventual restrictions on safeguards applicable to asylum seekers, reduction of deadlines, or the introduction of swifter procedures may impact access and extent of judicial review.

⁵⁰⁷ Supreme Court, order of 25 March 2025, appeal no. 22/2025, ECLI:ES:TS:2025:3180A.

⁵⁰⁸ Tribunal Supremo, order of 21 October 2025, appeal no 22/2025, ECLI:ES:TS:2025:9796A

⁵⁰⁹ El País, "El Supremo califica de "inadmisibile" la actuación del Gobierno con los menores solicitantes de asilo en Canarias", 23 October 2025, available at <https://elpais.com/espana/2025-10-23/el-supremo-califica-de-inadmisibile-la-actuacion-del-gobierno-con-los-menores-solicitantes-de-asilo-en-canarias.html>

⁵¹⁰ El País, "España prepara una ley para restringir el asilo y adaptarse a la Unión Europea", 20 December 2024, available at <https://elpais.com/espana/2024-12-20/espana-prepara-una-ley-para-restringir-el-asilo-y-adaptarse-a-la-union-europea.html>

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

The executive bodies that intervene on asylum processing and decision-making in Spain, as explained above, are the Office on Asylum and Refuge (OAR/*Dirección General de Protección Internacional*) and the Interministerial Commission on Asylum and Refuge (CIAR), both specialized on asylum matters. It can however be highlighted that the high increase of asylum applications in Spain led to the involvement of the National Police in the management of asylum of requests, by intervening in the assignment of appointments to lodge the asylum request and processing the identifying documentation. Police officers have also been involved in interviewing asylum seekers, although they do not always receive the necessary training for this purpose⁵¹¹.

Criticisms have also been raised regarding interpretation services provided during interviews at the asylum procedure. According to the AIDA Report on Spain, the Ministry of Interior entrusted, since 2016, services on the provision of interpreters supporting the OAR and police offices to a translation private company, leading to several shortcomings, mainly due to the lack of specific knowledge on asylum and migration matters and a certain lack of expertise in interpretation techniques and command of languages, in addition to interpretation usually being provided by phone⁵¹². NGOs and other organisation also assist with interpretation services during asylum interviews, challenges arising from the significant increase in requests for languages of sub-Saharan countries (Wolof, Bambara, Mandinga, Somali...) and the lack of interpreters and materials in those languages⁵¹³.

Involvement, efforts, and interests that executive bodies display

In asylum adjudication cases, executive bodies in charge of instruction and decision-making on asylum are represented by the State Attorney, who defends the position of the Ministry of the Interior⁵¹⁴. This is a legal requirement, since the Administration must defend the legality of its own conduct within contentious-administrative procedures against its resolutions or actions.

Beyond this formal role, it can be deduced from the Spanish cases analysed through this Report that the executive displays an active procedural involvement in asylum litigation, particularly in cases concerning pushbacks and procedural barriers. The State Attorney not only intervenes as defendant of the legality of administrative action by contesting judicial actions and opposing interim measures aimed at suspending removal or maintaining reception conditions, but also actively participates in asylum adjudication by appealing judgments unfavourable to the administration, thereby reflecting the executive's interest in preserving the effectiveness of migration control policies. This level of involvement can be explained by the dual role of the Ministry of the Interior in the Spanish asylum system, which combines responsibilities for international protection with broader objectives of migration and border control. No disaggregated data have been found to assess territorial differences in executive involvement.

Role of executive bodies and their implications in asylum access adjudication

Available sources do not allow for an assessment of the impact of executive bodies' participation on judicial decision-making in asylum cases in Spain, and how their intervention may affect judicial outcomes. Nevertheless, the structure of the Spanish judicial and asylum systems highlights certain elements that may have implications for adjudication. Since judicial review of asylum decisions follows the general model of

⁵¹¹ Spanish Ombudsman, Report 2019, p. 238. See also EUAA, Asylum Report 2024, available at <https://www.euaa.europa.eu/asylum-report-2024>, p. 106.

⁵¹² AIDA/ECRE, Country Report Spain, 2024 - Update 2025, pp. 59-60.

⁵¹³ CEAR's Input by civil society organisations to the EUAA's Asylum Report 2025, https://euaa.europa.eu/sites/default/files/2025-02/11_comision_espanola_de_ayuda_al_refugiado.pdf

⁵¹⁴ *Ley 52/1997, de 27 de noviembre, de Asistencia Jurídica al Estado e Instituciones Públicas*, BOE no. 285, 28.11.1987/ Law 52/1997 on legal assistance to the State and public institutions.

contentious-administrative procedures⁵¹⁵, courts review the legality of administrative acts on the basis of the administrative file submitted by the authority that adopted the decision, without the court assuming an investigative role as such. If the applicant does not request the taking of evidence, the procedure is primarily structured around the review of the administrative record made by the Administration, which may produce some asymmetries between the parties.

B. International or regional organizations

We have already explained in Part 2 of this National Report the UNHCR's role in the processing of asylum requests (art. 34 and 35 of Law 12/2009), as well as the operational assistance provided by the EUAA.

Involvement, efforts, and interests that international and regional organizations display

Available sources do not indicate a direct involvement of international or regional organizations in asylum access adjudication before Spanish judicial bodies. Neither UNHCR nor the EUAA seem to participate as parties, interveners, or *amici curiae* in judicial proceedings concerning asylum decisions in Spain, apart from the significant UNCHR's role on the asylum procedure and its functions of counselling, legal support and monitoring of the correct application of international law on refugees. Their limited involvement in asylum adjudication may be explained by their respective mandates and by the institutional design of the Spanish asylum system.

C. NGOs and bar associations

NGOs and bar associations involved in asylum access adjudication. Involvement, efforts, and interests.

Bar associations are involved in asylum access adjudication in Spain both at the asylum determination procedure, and during the contentious-administrative appeals, by ensuring the appellants' right to free legal assistance. In Spain, several bar associations, such as those in Madrid, Murcia or Almería, have a section specialized on migration and international protection. The extent of their involvement is primarily explained by the mandatory nature of legal assistance in border procedures and in detention, as well as in contentious-administrative appeals under Spanish law.

NGOs mostly participate in the administrative stage, by providing information, counselling and legal assistance. They may also accompany applicants during the judicial procedures with their own legal services, often assuming legal representation of applicants as well. Their involvement reflects the structural reliance of the Spanish asylum system on non-governmental actors for the correct functioning of the international protection system⁵¹⁶.

One of the most prominent organisations on refugee assistance in Spain is CEAR (*Comisión Española de Ayuda al Refugiado*, Spanish Commission of Refugee Assistance, already introduced in Part 2 of this National Report). Its legal service is responsible for investigating the political situation and respect for human rights in the countries of origin, for searching for evidence of the facts alleged by the applicants, and for submitting reports to the authorities. Their lawyers annually assist around 2,500 new refugees and stateless persons, who are accompanied and advised from the moment they apply for protection. The number of cases handled per year exceeds 10,000. For those whose applications are rejected, CEAR prepares the corresponding appeals and provides them with immigration advice to help them regularize their status. Its legal service is organized geographically across various regional offices, with priority given to key points of access to the asylum procedure (airports, ports, coastlines), offering 24-hour on-call services. In parallel, several specialized teams operate, addressing specific issues or groups in need of

⁵¹⁵ Art. 48 LJCA.

⁵¹⁶ See the Sixth Additional Provision of the Spanish Law on Asylum 12/2009 on cooperation with non-governmental organisations, establishing that public authorities will promote the activities of legally recognized non-profit organizations whose objectives include advising and assisting people in need of international protection. Their reports will be incorporated into the relevant files of international protection applications initiated by the Ministry of the Interior.

protection: litigation team at central offices for hearings held in the Central Contentious-administrative Courts; statelessness team at the Madrid regional office, specializing in document retrieval, application preparation, and case monitoring; minors team, focused on preparing reports, supporting specific cases, and raising awareness; and the translation department, essential for document submission, with the collaboration of a large team of volunteers, many of whom are or were refugees. In especially serious cases, CEAR also appeals to the Superior Courts of Justice, the Supreme Court, the Constitutional Court, the ECtHR, the UN Committee Against Torture, or the United Nations Human Rights Committee⁵¹⁷.

Other NGOs, organisations and associations who provide orientation and legal assistance to asylum seekers are ACCEM, CCAR Barcelona, CESAL, Cruz Roja, Diaconía Madrid, Federación Andalucía Acoge, Fundación APIP-ACAM, Fundación Cepaim, La Merced Migraciones, MPDL, Provivienda, Pueblos Unidos, Red Acoge, ONG Rescate, URDA Spain⁵¹⁸. The extent of involvement of these organisations in asylum adjudication varies significantly depending on their resources, territorial presence, and degree of legal specialization.

Also, in CIEs, third-country nationals are entitled, in accordance to art. 62 bis of the Spanish Aliens Act, to contact with NGOs working on the protection of migrants, organisations being able to visit the centres.⁵¹⁹ Art. 59 of the Regulation on CIEs sets the conditions for the visits of these organisations, and the obtention of accreditation for their staff. Art. 58 of that Regulation also foresees the possibility for organisations to participate in the provision of social assistance services to detainees. In addition to improving conditions of detention in CIEs, these organisations may contribute to the identification of vulnerable persons with special needs. This enhanced involvement in detention contexts may reflect the heightened barriers to accessing asylum in such settings and the role of NGOs as safeguards for identifying protection needs.

Role of NGOs and bar associations and their implications

Available sources do not provide an assessment of the impact of NGOs and bar associations on judicial decision-making in asylum cases in Spain. The following assessment of their role and implications in asylum access adjudication is based on their formally recognised functions within the asylum system, available reports on their activities and practice, and the type of contributions they are able to make, as explained in the previous question.

Bar associations contribute to asylum adjudication primarily through the provision of legal assistance and representation. As explained above in section I.B, difficulties in obtaining effective legal assistance have been reported in immigration detention, where access to lawyers and the short timeframes applicable to asylum procedures may pose particular obstacles; in situations of large-scale arrivals by sea, where the availability and quality of legal assistance by duty lawyers have been questioned; and in border asylum procedures, where lawyers may have to work under inadequate practical conditions and particularly short procedural deadlines. These difficulties are compounded by the declining number and working conditions of duty lawyers and by territorial disparities in the organisation and financing of legal aid across Spain. Bar associations and the General Council of Spanish Lawyers have sought to address some of these challenges by establishing specialised services, providing training to lawyers, and developing practical guidance, in cooperation with UNHCR, on legal assistance in international protection procedures.

Such training and specialisation may also have implications for judicial proceedings, as the quality of legal representation affects how claims and legal arguments are presented before courts. This may be particularly

⁵¹⁷ Information retrieved from CEAR's website: <https://www.cear.es/atencion-juridica/>

⁵¹⁸ List of organisations provided by UNCHR Spain in its website: <https://help.unhcr.org/spain/donde-encontrar-ayuda-espana/asistencia-legal/>. *Coordinadora de Barrios para el Seguimiento de Menores y Jóvenes* also participates as party in judicial appeals affecting minors (see Part 2 of this National Report).

⁵¹⁹ Real Decreto 162/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros, BOE no. 64, 15 March 2014.

relevant at the cassation stage before the Supreme Court. Given the specific admissibility requirements governing cassation appeals, the lawyer's ability to identify and substantiate the objective cassation interest of the case and to formulate the legal questions requiring interpretation may have a significant bearing on whether the appeal is admitted. This may, in turn, affect which asylum-related legal questions reach the Supreme Court and provide an opportunity for the development of case law.

NGOs also contribute to asylum adjudication through the provision of specialised legal assistance and, in some cases, legal representation before judicial bodies, as explained above. NGOs also contribute by supporting the evidentiary dimension of asylum claims, including the collection and submission of country-of-origin information, expert opinions, and reports addressing vulnerability or persecution. Insofar as such material is incorporated into administrative files subject to judicial review, NGOs may contribute to the factual and legal context within which adjudication takes place, without exercising any decision-making role.

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

Main migration routes towards the country since 2010

One of the most important migration routes into Spanish territory is the Western Mediterranean route, which includes maritime crossings from Morocco and Algeria towards the Andalusian coast and the Balearic Islands (especially from Algeria in this case), as well as the attempts to enter the Spanish enclave cities of Ceuta and Melilla across the land border with Morocco. In 2018, it became the most frequently used route into Europe with a peak in arrivals, which decreased from 2020 onwards due to close Moroccan collaboration in fighting against irregular immigration, among other factors⁵²⁰. Arrivals increase by around 12% in 2023 (the use of powerful speedboats was frequent)⁵²¹, and remained at around the same numbers in 2024.

The Atlantic or Western African route to the Canary Islands involves long Atlantic crossings from West African countries such as Mauritania, Senegal, The Gambia, or Western Sahara. It has existed for many years and has seen high peaks in arrivals at different times, while also being the deadliest route in terms of mortality (notably during the 'cayuco crisis' in 2006). A significant resurgence of this route was evident in 2020 (increased pressure can be attributed to pandemic restrictions that diverted people from the Western Mediterranean route to this one⁵²²) and 2021, with the number of arrivals decreasing in 2022. In 2023, a 161% increase was driven mostly by direct arrivals from Senegal, followed by Morocco and Mali. According to Frontex, the Canary Islands witnessed in 2024 an 18% increase in arrivals, reaching almost 47 000, the highest figure since Frontex began collecting data in 2009. This was fuelled by departures from Mauritania, even as flows from other departure points declined. Malians, Senegalese and Moroccans were the main nationalities arriving via this route⁵²³.

The Spanish Ministry of Interior regularly publishes assessments on the numbers of arrivals of migrants in Spain distinguishing between maritime and land channels. So far in 2025, general numbers of arrivals have decreased (36.775, -42,6% than in 2024) witnessing a huge reduction of arrivals by sea to the Canary Islands (17.555 arrivals, -59,9% than in 2024) and Ceuta (4, -85,7%) but an increase in maritime arrivals to

⁵²⁰ Council of the EU, "Migration flows on the Western routes", <https://www.consilium.europa.eu/en/policies/western-routes/>

⁵²¹ Frontex, Western Mediterranean Route, https://www.frontex.europa.eu/assets/Migratory_routes/2025/ANNEX_Western-Mediterranean_up-to-2023.pdf

⁵²² Frontex, Western African Route, https://www.frontex.europa.eu/assets/Migratory_routes/2025/ANNEX_Western-African-Route_up-to-2023.pdf

⁵²³ Frontex, "Migratory routes", <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/>

the Balearic Islands (7.321, +24,5% with regard to 2024) and to Melilla (25, +19%). A surge in arrivals by land to Ceuta (3.523, +39,2%) and especially to Melilla (327, +181,9%) can also be appreciated⁵²⁴.

Forced migration routes towards the country

Spain has experienced an evident increase in asylum applications, from 14.908 in 2015 to 167.749 in 2024.

Tabla 1. Evolución solicitantes de protección internacional últimos 10 años

Año solicitud	Solicitudes	Solicitudes actualizadas	Diferencia
2015	14.887	14.908	21
2016	16.544	16.540	-4
2017	31.740	31.746	6
2018	55.749	55.785	36
2019	118.446	118.541	95
2020	88.826	89.003	177
2021	65.482	65.957	475
2022	119.240	119.243	3
2023	163.642	163.871	229
2024	167.749	167.749	0
Total	842.305	843.343	1.038

Source: Evolution of applicants for international protection last ten years; Spanish Ministry of the Interior, OAR, *Asilo en cifras*, 2024.

From the total number of 2024 (167.749), 70.979 of applicants were women, while 96.770 were men.

An evolution in the countries of origin of applicants is also perceivable. While in the first half of the 2010 decade, applicants came mostly from African countries, as well as from Syria and Afghanistan⁵²⁵, approximately since 2018 there is a clear shift in numbers towards Latin American nationalities, particularly from Venezuela and Colombia⁵²⁶, becoming the main countries of origin of applications in 2023. This also affected nationalities with the highest number of favourable decisions.

In 2024, asylum applications submitted in Spain mostly came from Armenia, Belarus, Cameroun, Ukraine and Panama. The nationalities representing highest numbers of favourable resolutions on the status of refugees in 2024 were Nicaragua, Syria, Afghanistan, Colombia, and Honduras⁵²⁷. In 2025, asylum

⁵²⁴ See the information available at Ministerio del Interior, “Balances e Informes”, report on irregular immigration, accumulated data from 1 January to 31 December 2025, available at <https://www.interior.gob.es/opencms/es/prensa/balances-e-informes/>

⁵²⁵ In 2010, the main countries of origin of asylum applicants in Spain were Cuba, Nigeria, Algeria, Guinea, Cameroun, Colombia, Cote d'Ivoire, Morocco, Palestina and RD Congo. In 2015, main countries of origin of applicants were Syria, Ukraine, Palestina, Algeria, Venezuela, Morocco, Dominican Republic and China.

⁵²⁶ In 2018, main countries of origin of asylum applicants in Spain were Venezuela, Colombia, Syria, Honduras, El Salvador, Ukraine, Palestina, Nicaragua, Algeria, Morocco.

⁵²⁷ Statistics available at Ministerio del Interior, OAR, <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>

applications submitted in Spain mostly came from Venezuela, Mali, Colombia, Peru, Senegal and Morocco⁵²⁸.

By place of submission, the majority of applications for international protection are submitted within the national territory (157.470 in 2024, 158.292 in 2023), particularly in national police offices and OAR offices in the main cities, followed by border crossing points (7.382 in 2024, 3.386 in 2023), especially at Madrid and Barcelona airports and at the Melilla border points, and CIEs (853 in 2024, 877 in 2023)⁵²⁹.

Main entry points in the country since 2010

Since 2010, Spain has experienced mixed migration flows by sea, land and air borders, with relatively stable and well-documented entry points, although their relative importance has fluctuated over time depending on migration routes and geopolitical factors. Official statistics published by the Ministry of the Interior, as well as Frontex, referred to above, allow to identify a limited number of localities/areas where arrivals usually concentrate⁵³⁰.

By sea, the Canary Islands have represented one of the main maritime entry points to Spain. Arrivals have primarily taken place on the islands of El Hierro, Lanzarote, Gran Canaria, Tenerife, and Fuerteventura (in that order), with El Hierro and Lanzarote recording particularly high numbers in recent years. Along the Andalusian coast, the main entry points of migration by sea are Almería, and, at a significant distance, Ceuta, Melilla, Cádiz, Granada and Málaga, and, in the Valencian Community, Alicante. In the Balearic Islands, main points of entry include Mallorca, Ibiza and Formentera.

At several maritime entry points, the authorities resort to centres for the temporary attention and reception of foreigners (CATE), as described in Part 2 of this National Report, including facilities in Lanzarote, El Hierro, Motril (Granada), seaports of Almería, Málaga, and Algeciras (Cádiz)). Border control and first reception involve the *Guardia Civil*, the National Police, and the maritime search and rescue service (*Salvamento Marítimo*), often in cooperation with NGOs such as CEAR, Cruz Roja and ACCEM.

Access to Spanish territory by air primarily occurs through international airports, notably Madrid–Barajas and Barcelona–El Prat, with the presence of the *Guardia Civil* and National Police. Asylum applicants at airports are usually held in designated facilities commonly referred to as “asylum rooms”, already described in Part 2 of this Report.

By land, entry points are concentrated in the Spanish enclaves of Ceuta and Melilla, where entry is channelled through heavily securitised border infrastructures, including multi-layered fences, surveillance systems and permanent police presence, as described in Part 2. The most crowded border posts are notably Beni Enzar in Melilla and El Tarajal in Ceuta.

Implications that migratory routes towards the country have on how judicial institutions

Although migratory routes towards Spain do not appear to influence judicial decision-making, they might shape the legal assessment of barriers to access asylum indirectly by determining the border contexts in which barriers are implemented and the type of disputes that reach judicial bodies. In Spain, this is particularly visible in litigation concerning Ceuta and Melilla, where attempts to enter through the land border have generated legal controversies regarding hot pushbacks. The political relationship of Spain with its migration partner, Morocco, certainly influences governmental actions (e.g. Moroccan collaboration is key in facilitating pushback and pullback practices by Spanish authorities) and, although it has no impact on asylum adjudication, the relevance of this cooperation lies primarily in the factual and legal framework

⁵²⁸ Provisional data as of 30 November 2025, available at <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>

⁵²⁹ Ministerio del Interior, OAR, “Asilo en cifras 2024”, available at <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>

⁵³⁰ See also CEAR, Informe 2025. Las personas refugiadas en España y Europa, pp. 76 *et seq.*, available at https://www.cear.es/wp-content/uploads/2025/06/CEAR_XXIII INFORME ANUAL 2025.pdf

invoked in these cases (e.g. bilateral agreements between Spain and Morocco on prevention of migration and readmission, as well as on border demarcation)⁵³¹.

Implications of country entry points on what happens in judicial institutions

In Spain, entry points do not, as such, determine different types of competent courts or general legal standards for the assessment of the legality of barriers to access asylum, given that asylum legislation corresponds to an exclusive state competence in Spain, and that judicial review of asylum decisions is entrusted to centralised courts⁵³².

However, entry points may have indirect legal relevance insofar as they determine the type of barrier implemented and the applicable asylum procedure. The place of submission of an asylum request certainly affects judicial review, but because submission determines the applicability of the swifter border asylum procedure - which also applies in detention at CIEs - or the regular one, and thus the administrative and judicial challenges available, as has been explained in previous sections of this Part 3. These implications are procedural rather than institutional, and they stem from the applicable asylum procedure rather than from the entry point as such.

An exception to this general framework can be identified at the Spanish–Moroccan land borders in Ceuta and Melilla. The introduction of a special provision in the Spanish Organic Law on Aliens allowing for “rejections at the border” exclusively in these areas has created a differentiated legal regime that judicial bodies are required to take into account when assessing the legality of barriers to access asylum. As a result, courts are compelled to start their analysis from the existence of an explicit legislative authorisation for certain state practices at this border, which narrows the scope of judicial scrutiny in comparison with other entry points where no such exceptional regime applies. It is interesting to note how Spanish courts are clarifying that this special provision does not automatically apply to all forms of irregular entry in Ceuta and Melilla and, in particular, that it does not cover situations in which individuals enter Spanish territory by swimming along the coast, as such cases fall outside the operational concept of the border envisaged by the legislature⁵³³.

B. Composition and spatial distribution of forced migration population⁵³⁴

Data provided by the Spanish Asylum and Refugee Office, OAR, dependent on the Ministry of the Interior, on the number of international protection requests and their resolution can be accessed at

- Statistical information 2025-2023: <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>
- Annual publication of “Asilo en Cifras”, 2023-2006: <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/publicaciones/>
- OAR data, 2024: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/interior/paginas/2025/160125-oficina-asilo-refugio-2024.aspx>

⁵³¹ This is particularly illustrated in the Constitutional Court judgment on the constitutionality of the legal regime of pushbacks at Ceuta and Melilla, which explicitly addressed the migratory pressure and massive assaults at these borders, showing the relevance of a route-specific context when assessing the legality of a barrier (STC 72/2020); the analysis of the legal nature of the border regarding borders between Spain and Morocco (judgment of the First Instance and Investigation Court of Melilla, ES:JPII:2014:14A, analysed under “walls and fences”); or the analysis undertaken by the Supreme Court of the legality of the direct application of the Spain-Morocco agreement on the return of minors (ES:TS:2024:114).

⁵³² While immigration cases are however the competence of decentralized courts, they also apply State legislation on aliens.

⁵³³ Superior Court of Justice of Andalucía, judgment of 25 March 2025, *appeal no. 823/2024*, ES:TSJAND:2025:6216, on pushbacks at sea, referred to above.

⁵³⁴ In case data are easily available online in English, Spanish, or French (e.g., charts on official websites, policy documents, or reports), the expert can simply provide the hyperlink to access the source.

Data provided by CEAR (*Comisión Española de Ayuda al Refugiado*/Spanish commission of refugee assistance), who publishes each year statistics on asylum in Spain:

- 2024-2014 <https://masquecifras.org/#cifras-espana>

Implications on what occurs in judicial institutions

Increases in the number of asylum seekers and refugees primarily affect the process and functioning of judicial bodies responsible for assessing the lawfulness of barriers to access asylum, rather than the substantive outcomes of adjudication.

Periods of sharp growth in asylum applications are associated with significant capacity constraints within the asylum administration, leading, more particularly, to delays in registration, difficulties in accessing information, shortages of appointments to lodge asylum applications, prolonged processing times, complications regarding documentation and reception conditions, as explained above. These shortcomings may operate as practical barriers to access asylum, insofar as individuals are unable to formalise their claims or obtain documentation within a reasonable time. At the judicial level, high numbers of asylum applications may correlate with increased caseload and longer duration of judicial procedures as we have seen, contributing to backlogs and extended delays for judicial review, and thus raising concerns regarding effective access to justice. Constitutional case-law confirms that structural workload pressures do not in themselves justify excessive delays in adjudication.

Also, as explained above, it has been reported that decisions on asylum requests from asylum seekers of certain nationalities have been expedite by OAR in 2021, as the aim of decreasing processing times was to advance with applications with high likelihood of being rejected. Also, the AIDA Report includes relevant information on the impact of certain nationalities in decision-making during the asylum procedure⁵³⁵. However, no relevant evidence has been found on the influence of numbers of asylum seekers, nationalities and origin of applicants in judicial asylum adjudication, apart from the application of safe third country and safe country of origin concepts.

Displaced persons who are not asylum seekers or recognized refugees

Data and statistics above include beneficiaries of subsidiary protection and temporary protection⁵³⁶. Beneficiaries of temporary protection from Ukraine are not affected by the barriers analysed in this report, while applicants of subsidiary protection may be affected in similar terms as asylum seekers by pushbacks, pullbacks, detention or procedural barriers.

Distribution of asylum seekers and displaced persons within the territory

Asylum applications submitted by Autonomous Community, 1.01.2024 to 31.12.2024.

Comunidad Autónoma	
Comunidad De Madrid	47.439
Andalucía	25.538
Cataluña	17.488
Galicia	8.415
Aragón	8.153
Comunitat Valenciana	7.973

⁵³⁵ AIDA/ECRE, Country Report Spain, 2024 - Update 2025, section H of “Asylum Procedure”.

⁵³⁶ See data published by the Spanish Ministry of the Interior at <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>

País Vasco	7.729
Canarias	7.667
Castilla-La Mancha	7.087
Castilla Y León	6.899
Murcia, Región De	3.565
Principado De Asturias	2.694
Extremadura	2.660
Ceuta	2.506
Cantabria	2.365
Melilla	1.892
Illes Balears	1.493
Comunidad Foral De Navarra	1.441
La Rioja	808
Total	163.812

Asylum applications submitted by province, 1.01.2024 to 31.12.2024.

Provincia	
Madrid	47.439
Barcelona	12.745
Málaga	8.020
Zaragoza	5.612
Bizkaia	4.916
Valencia/València	4.475
Palmas, Las	4.221
Almería	3.945
Sevilla	3.932
Coruña, A	3.829
Murcia	3.565
Santa Cruz De Tenerife	3.446

Cádiz	2.839
Girona	2.697
Asturias	2.694
Ciudad Real	2.662
Alicante/Alacant	2.510
Ceuta	2.506
Cantabria	2.365
Córdoba	2.317
Huesca	2.231
Valladolid	2.155
Badajoz	1.959
Huelva	1.936
Melilla	1.892
Pontevedra	1.778
Ourense	1.588
Granada	1.554
Balears, Illes	1.493
Araba/Álava	1.483
Guadalajara	1.463
Toledo	1.454
Navarra	1.441
Gipuzkoa	1.330
Lleida	1.240
Lugo	1.220
Jaén	995
Castellón/Castelló	988
León	987
Albacete	817
Rioja, La	808

Tarragona	806
Salamanca	792
Segovia	752
Cáceres	701
Cuenca	691
Zamora	676
Burgos	633
Ávila	435
Teruel	310
Soria	254
Palencia	215
Total	163.812

Asylum applications sorted by place of submission, 1.01.2024 to 31.12.2024.

Place of submission of asylum request	
Applications in the territory	157.321
Applications in border post	7.382
Applications in embassies/consulates	1.810
Applications in detention centres (CIEs)	853
Total	167.366

Statistics from the Spanish Ministry of the Interior, OAR⁵³⁷, <https://proteccion-asilo.interior.gob.es/es/datos-e-informacion-estadistica/informacion-estadistica-en-formato-reutilizable/>

Implications of the spatial distribution of the forced migration population on asylum access adjudication

Available information shows that the possibility of obtaining an appointment to formalize the asylum request may vary greatly among provinces, as explained in Part 2 of this National Report⁵³⁸, as well as the that particular difficulties have been identified in the registration of applications in Ceuta and Melilla. There are also divergences on access to reception and assistance services, with big cities, where asylum seekers tend to concentrate, providing greater availability of resources and infrastructure than peripheral areas.

⁵³⁷ See also, in that link, provisional data for 2025 (as of 30 November 2025).

⁵³⁸ See AIDA/ECRE, Country Report Spain, 2024 - Update 2025, p. 52-54.

Regarding access to legal assistance and representation, information has already been provided above on the insufficient availability and quality of legal assistance for migrants who disembark in high numbers at the Spanish coasts, particularly in the Canary Islands, and at international airports, such as Madrid-Barajas.

We have already assessed the centralization of judicial review of asylum decisions in Spain. No relevant information has been found however on specific challenges this may create for access to justice.

C. Political and public debate in the country

Relevance of the topic in political debate

Spain has received a very high volume of applications for international protection in recent years as well as high numbers of migrants arriving in the country, rendering asylum but mostly migration management a relevant issue on the political agenda. Furthermore, several tragic events at the border with Morocco in Ceuta and Melilla, reports from NGOs regarding abuses and violations of the fundamental rights of migrants and asylum seekers, and the legislative changes -promoted by a conservative government and not modified by a progressive one (e.g., the legalization of summary returns)- clearly fuel this political debate and, at the same time, generate electoral material against the reception and integration of migrants and refugees in Spain. Particularly the political party VOX is instrumentalizing this debate and using anti-immigration arguments and xenophobic sentiments in its electoral and political agenda⁵³⁹.

In 2024, the regional coalitions between the Partido Popular (PP) and Vox broke down due to disagreements over migration (the PP had supported a plan from the socialist Government to transfer minors from the Canary Islands to the mainland, which led the far-right party VOX to withdraw from the governments of several autonomous communities)⁵⁴⁰, demonstrating how this issue can destabilize alliances and influence government action.

More recently, in July 2025, the assault of an elderly resident of the town Torre Pacheco, Murcia, by young people allegedly of North African origin triggered a series of xenophobic riots, demonstrations by far-right groups, and social tension that spread beyond the local area. In the political arena, the incident was used as a weapon of confrontation: the government accused Vox of inciting disturbances through hate speech and incitement⁵⁴¹, while Vox responded by blaming PSOE and PP for fostering irregular immigration and generating insecurity⁵⁴². This political confrontation turned the crisis into a national debate on immigration, security, and public discourse, beyond the specific events in the town.

In the last electoral campaign, only the hard-right political party VOX and the left coalition SUMAR, that conforms the Government with the socialist party, PSOE, included aspects relating to access to asylum in their political programmes. While VOX included a proposal to externalise the asylum procedure to non-European countries through disembarkment platforms managed by the EU⁵⁴³, SUMAR asked for the adoption of a regulation implementing the law on asylum, including developing its art. 38 on transfers to

⁵³⁹ See, for instance, EuropaPress, “Vox quiere prohibir que las solicitudes de protección o asilo se puedan pedir desde los CIE”, 17 February 2023, <https://www.europapress.es/epsocial/migracion/noticia-vox-quiere-prohibir-solicitudes-proteccion-asilo-puedan-pedir-cie-20230217125156.html>; El Confidencial, “Vox y la inmigración: un programa electoral radical de imposible cumplimiento”, 8 July 2023, available at https://www.elconfidencial.com/espana/2023-07-08/23j-vox-inmigracion-programa-radical-imposible_3692405/

⁵⁴⁰ El Diario.es, “Vox da por rotos los gobiernos autonómicos tras aceptar el PP la acogida de 347 menores migrantes”, 10 July 2024, available at https://www.eldiario.es/politica/vox-cumple-amenaza-rompe-acuerdos-pp-politica-migratoria_1_11514485.html

⁵⁴¹ RTVE, “El Gobierno culpa a Vox de los altercados en Torre Pacheco y avisa de que detrás hay "grupos organizados", 14 July 2025, available at <https://www.rtve.es/noticias/20250714/gobierno-culpa-a-vox-altercados-torre-pacheco-avisa-detras-hay-grupos-organizados/16663395.shtml>

⁵⁴² Onda Cero, “Vox alerta de una "invasión migratoria brutal" en España: "Exigimos recuperar nuestras fronteras", 12 July 2025, available at https://www.ondacero.es/noticias/espana/vox-alerta-invasion-migratoria-brutal-espana-exigimos-recuperar-nuestras-fronteras_202507126872b6076e1ec26d312b10fd.html

⁵⁴³ See VOX's website: <https://www.voxespana.es/programa/programa-electoral-vox>

Spain from diplomatic missions abroad in order to request asylum, as an alternative to irregular migration⁵⁴⁴ (despite being part of the government, this proposal has not been developed).

Relevance of the topic in public debate

In Spain, access to asylum is a relevant issue in public debate, although it is frequently mediated through discussions on border control (Ceuta, Melilla, the Canary Islands) and episodes framed as “migration crises”. Public opinion evidence shows spikes in concern about immigration linked to media coverage of arrivals and the politicisation of the issue⁵⁴⁵. Studies on media narratives surrounding events such as the 2021 Ceuta crisis and political-media attention to border incidents reinforce the idea that the agenda is organised around border control, perceived pressure and security narratives⁵⁴⁶. While Spanish media do report on problems related to access to asylum, such coverage tends to be episodic and event-driven, often emerging in connection with border incidents, humanitarian tragedies or NGO reports, rather than forming part of a sustained public debate on asylum as a legal right and a procedural guarantee.

Relevance of the topic in public opinion

In Spain, public opinion data suggest that “access to asylum” is rarely measured as a standalone issue; instead, it tends to appear indirectly through broader concerns about immigration and border arrivals. CIS⁵⁴⁷-based reporting shows that immigration can become a top public concern (e.g., around 30% mentioned it among the country’s main problems in September 2024)⁵⁴⁸, and Elcano Institute links these spikes to the visibility of arrivals and politicisation of border events⁵⁴⁹.

Spain scores relatively positively in comparative data and shows strong support for an EU common migration policy⁵⁵⁰, while 2025 polling finds large majorities in Spanish public opinion saying immigration levels have been “too high”, that there is “too much” immigration or that it is having a negative impact on the country⁵⁵¹. Where barrier-specific opinion is available, support for restrictive border measures or externalisation can be identified, though it can be anecdotic and such measures are not consistently tracked over time⁵⁵².

Implications that political debate and public opinion have on what occurs in judicial bodies

It cannot be sustained, on the basis of relevant sources, that public opinion directly influences or exerts pressure on Spanish courts as regards access to asylum litigation. Rather, it is legislative or executive reforms of the immigration and asylum legislation –which may themselves be indirectly shaped by public

⁵⁴⁴ See SUMAR’s website: <https://movimientosumar.es/wp-content/uploads/2023/07/Un-Programa-para-ti.pdf>

⁵⁴⁵ Real Instituto Elcano, “La opinión pública española sobre la inmigración en contexto”, 3 October 2024, available at <https://www.realinstitutoelcano.org/comentarios/la-opinion-publica-espanyola-sobre-la-inmigracion-en-contexto/>. This article shows that public concern about immigration in Spain is highly context-dependent, increasing during periods of intense media coverage and political debate on border arrivals. At its peak, around 30% of respondents identified immigration as one of Spain’s main problems in CIS surveys, a perception driven more by the visibility of arrivals and political framing than by the presence of settled immigrant populations.

⁵⁴⁶ Bourekba, M., Garcés-Mascreñas, B., Güell, B. and Marín, M., “Migration narratives in media and social media The case of Spain”, BRIDGES Working Papers, 9 February 2023, <https://www.bridges-migration.eu/wp-content/uploads/2023/02/BRIDGES-Working-Papers-9-Migration-narratives-in-media-and-social-media-the-case-of-Spain.pdf>

⁵⁴⁷ *Centro de Investigaciones Sociológicas* (Spanish public centre for sociological research).

⁵⁴⁸ El País, “¿Cuántos españoles ven la inmigración como un problema? Seis gráficos clave”, 20 September 2024, <https://elpais.com/espana/2024-09-20/cuantos-espanoles-ven-la-inmigracion-como-un-problema-en-seis-graficos-clave.html>

⁵⁴⁹ Real Instituto Elcano, 3 October 2024, *supra*.

⁵⁵⁰ European Parliament, Plenary Insights, Eurobarometer October II 2024, <https://www.europarl.europa.eu/at-your-service/de/be-heard/eurobarometer/plenary-insights-october-ii-2024>

⁵⁵¹ The Guardian, “Western Europeans say immigration is too high and poorly managed, survey finds”, 26 February 2025, <https://www.theguardian.com/uk-news/2025/feb/26/western-europeans-say-immigration-is-too-high-and-poorly-managed-survey-finds>

⁵⁵² El Faro de Ceuta, “El 61,4% de españoles se opone a retirar las concertinas de las vallas de Ceuta y Melilla”, 5 August 2018, <https://elfarodeceuta.es/espanoles-encuesta-retirar-concertinas-vallas-ceuta-melilla/>

opinion and political debate— that may affect the kind of barriers submitted to judicial review and thus indirectly impact on case-law. By way of illustration, the special regime on border rejections at Ceuta and Melilla, approved in 2015, has certainly influenced pushbacks adjudication with the interpretation of the new rules becoming a central axis of litigation and judicial interpretation. Likewise, the lack of normative development of the Law on Asylum has prompted court interpretation and direct implementation of art. 38 on transfers of asylum seekers from Spanish diplomatic missions abroad.

D. Corruption

As explained in Part 1 of this report, there have been criminal investigations into the existence of an illegal market for appointments to formalize an asylum request. The structural failures of the public system have given rise to criminal organisations abusing and benefitting from the despair of asylum seekers, ready to pay to obtain an appointment to lodge their asylum claim. Beyond this phenomenon, no reliable information has been identified indicating the existence of corruption involving public authorities at any stage of access to asylum in Spain.