

# The Asylum Legal Framework and the Social Integration of Refugees in Spain

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## 1. EVOLUTION OF ASYLUM IN SPAIN

Asylum legal framework in Spain has undergone an evolution that initially has followed the first impulse to adapt the asylum to constitutional provisions (Law 5/1984); later Spain adapted the legislation to adjustments claimed by the doctrine and case law (Law 9/1994), such as linking the protection of asylum to the recognition of refugee status. Finally, Law 12/2009 was enacted for the transposition of EU directives in the field of asylum and refugees (Pérez Sola 2011, 91).

In the Law on asylum of 1984 the recognition of refugee status implied a certain degree of legal protection, although it should be understood of less scope and intensity than that resulting from granting the asylum. Consistent with compliance with international commitments concerning refugees, and in line with the discretionary will of the government to grant asylum, the possibility of granting work permits and residence for people who have obtained this condition were envisaged, whenever requested to exercise a lucrative profession (art. 22.3). The obtaining of refugee status was one of the legal requirements for granting asylum eventually, so that in many cases, as demonstrated by the experience, although the aim of the applicant was obtaining asylum, he sought first the recognition of

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refugee status as it was easier to demonstrate the concurrence of the objective requirements under the Convention of Geneva of 1951. The recognition of refugee status did not automatically lead to the granting of residence and work permits. In this aspect was appreciable the difference between the regulation of the right of asylum and refugee status. The fundamental difference from the legal point of view between immigrant and refugee is that the former has right to leave their country of origin but in parallel has not the right to entrance to another country, because it is dependent on the situation socio-economic in another country, in the case of Spain, the national employment situation. By contrast, given the vital character of asylum, refugees have right to leave their country and entrance into another, although being subject to a prior request. However, the entrance's right is not dependent on the economic situation of the State of destination.

The scholar criticism focused therefore in the aforementioned atypical double status of asylum and refuge, the former being conceived as a discretionary award (in line with the traditional concept of asylum as an act of sovereignty), although the alleged grant provided to the applicant more favorable treatment than that accorded to the rest of foreigners. Legislation relating refugees deserved a generally favorable opinion, it cannot be said the same about that of asylum because of the indeterminacy of the legal requirements, the broad discretion granted to the public administration in implementation and the absence of adequate judicial guarantees (art. 21 of the Act did not even make mention to the availability of administrative appeal). Hence the doctrinal thesis according to which while in the regulation of refuge the previous law included fully legal concepts liable – in its application – to the control of courts, the legal provisions relating the asylum did the same with open and vague clauses determining therefore the exercise of discretionary powers (Parejo Alfonso 1995, 91).

The discretionary decision had justification in extralegal criteria, based on reasons of political expediency, of living together or national security not predetermined by the law, but they should be mentioned in the corresponding administrative resolution and necessarily they should be supported by the existence of objective data consistent with factual reality. Similarly, the discretion was limited by the international instruments signed by the Spanish State, including the principle of non refoulement. As noted above, the administration was not constrained to grant asylum, but the applicant was entitled to request and obtain it.

In the same way, for recognition of the right of asylum on humanitarian grounds, case law had required the concurrence of special qualifications of the grounds invoked by the applicant, justified by the recognition of the principle of international solidarity, projected onto the fundamental value of the dignity of human person, so that only the presence of these values would be justified the existence of humanitarian grounds for granting asylum. It must be said that after the successive legal reforms considerations of humanitarian grounds have remained as a way to authorize the stay in the territory even if the protection is not granted (Pérez Sola 1997, 43).

In 1994 a major reform of the 1984 Act took place involving the elimination of double regulation of asylum and refugee status that was not present in the surrounding countries, and introduced a phase of admissibility in the procedure for recognition of refugee status inspired by the guidelines of the European Union, in order to create an area of freedom, security and justice. The absolutely discretionary possibility for the Government to recognize asylum was removed, redirecting the question to the strict terms of the Geneva Convention of 1951. As a result of the Law 9/1994, the discretionary character of the granting of asylum disappears. The new wording of this rule – in relation to art. 1 – shaped this right fully in accordance with the wording and spirit of art. 13.4 of Spanish Constitution.

The essential elements of this constitutional right are the following:

- definition of asylum recognized in art. 13.4 Const. as a subjective right, also according to its domestic-international two-faced nature (necessarily referred to a foreigner);
- characterization of the enjoyment of the right as a result of an operation of simple recognition (declarative, not constitutive) of the subjective situation determinant of its entitlement: refugee status, defined as the characteristic of a qualified foreigner, resulting in such qualification from international law and specifically from the Geneva Convention;
- internal configuration (by act of Parliament) of the right by relation to two objective elements that make up a legal status: a) one international, that is non refoulement or expulsion under the terms of art. 33 of the aforementioned Geneva Convention); b) other internal, that is to say, the variable requirements or prerequisites for the ownership of rights and obligations under Spanish legislation: access to territory and residence in it, identity and travel documents, access to and development of lucrative activities (employment, professionals and commercial), any other that may be included in refugee conventions signed by Spain (international opening clause); the access to and enjoyment of benefits of economic and social assistance.

The right to asylum from the 1994 reform became: firstly, a subjective right susceptible of enjoyment after individual recognition of the subjective condition determining its entitlement and therefore a pre-existing right to such recognition, as its function is the mere finding of such condition, therefore right's recognition effectiveness is merely declaratory (Parejo Alfonso, 1995, 96); secondly, a right whose enjoyment enables the application of art. 13.1 Const. and, consequently, the expansion of the sphere of the holder to all constitutional rights and civil liberties (except those of political nature strictly reserved for Spanish nationals).

Partly the legislative reform was a response to the judgments of the Constitutional Court (no. 115/1987 of 7 July and no. 107/1984 of 23 November),

which had considered unconstitutional: a) the adopting by the Council of Ministers of the suspension of the activities of the associations promoted and integrated mainly by foreigners (for violation of art. 22.4 Const.); b) the requirement of prior administrative authorization for indoor or public places meetings of foreigners and for demonstrations (for violation of art. 21 Const.); c) the impossibility (in general) of judicial suspension of administrative decisions concerning foreign people (for violation of art. 24.1 Const.); d) the need of an administrative requirement (the obtaining of residence permit) for the recognition to foreigners of legal capacity for the purposes of valid formalization of employment contracts; e) regulation on preventive custody for expulsion purposes (for violation of art. 24.1 Const.).

The right to asylum in Spanish law, consists therefore of twofold elements (Parejo Alfonso 1995, 97):

- The first is formal-procedural right to apply, which is recognized to any foreigner without limitation (even foreigners located outside the borders, i.e. outside the proper limits of Spanish law). The effectiveness of the right of asylum depends on the legal status of this right, as already mentioned. It is, in the first instance, a real subjective right of procedural or formal character. It is a right to an express decision and in accordance with law on recognition of asylum, i.e. the statement of a concurrence of the subjective condition of qualified foreigner.
- The second element is the substantive level, i.e. the right to the status of asylee, i.e. asylum with content materialized by the act of granting it, under the legally declared and previously established framework (material dimension of asylum), during the time of persistence of the determining circumstances (temporal dimension without precise legal limitation).

The reform introduced by Law 9/1994 must be completed with a brief reference to the transposition into domestic law of the Directive 2001/55 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, which has allowed the configuration of a temporary protection status. Indeed, through Royal Decree no. 1325/2003 approving the Regulation on temporary protection regime in the case of a mass influx of displaced persons, a temporary protection under the new status of the displaced has been formalized.

However, the confusing profiles that marked both figures and the need to standardize the Spanish asylum system with those of the surrounding states, among others factors, forced to address a fundamental reform of asylum, a reform which implied, on the one hand, the suppression of double regulation of asylum and refugee status that was not present in the surrounding countries, and introduced a phase of admissibility in the procedure for recognition of ref-

ugee status inspired by the guidelines of the European Union, in order to create an area of freedom, security and justice. The possibility for the Government to recognize on a discretionary basis the asylum, was removed redirecting the question to the strict terms of the Geneva Convention of 1951 on the interpretation and application of the grounds of persecution contained in the Geneva Convention in accordance with the reality of new forms of persecution, among which we can mention the persecution of gender suffered by women in many countries for “moral or religious” reasons (Arenas Hidalgo 2009). In other cases, persecution may find their origin in sexual assaults of women for hypothetical reasons of “honour”. Of particular relevance is female genital mutilation, as well as the imposition and celebration of forced marriages founded on cultural traditions or economic reasons (Valero Heredia 2007).

With the new Law 12/2009 an uniform treatment is provided to the two forms of international protection, so that the new law provides the same single procedure for examining applications, whether asylum or subsidiary protection (Pérez Sola 2009). Therefore, the situation triggered by the 1984 Act, whose application during its ten years of existence was characterized by dilatory practices caused by the inefficient design of a dual system of successive procedures (first the refuge one and after the asylum one), has been overcome (Pérez Sola 2015). Although the new law continues to identify the right of asylum with the refugee status, it has incorporated the new subsidiary protection status as a requirement of EU law, but configuring it broader than required by the Directive and subjecting to precise rules what previously was in Spain a discretionary power of the Minister of the Interior. The refugee status, as established in the art. 3 LAPS, it is recognized to «every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, political opinions, membership of a particular social group, gender or sexual orientation, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country» (Díaz Lafuente 2014). Regarding the reasons for persecution included in the Geneva Convention, it is noticeable that the new law seems to add one more to the traditional five reasons for persecution: the gender or sexual orientation (Merino i Sancho 2011).

From the right of asylum shall be excluded foreign persons of whom there are serious reasons for considering that: «... b) they have been committed a serious crime outside the country of refuge before being admitted as refugees, that is to say, before issuing the residence permit based on the recognition of refugee status. Serious crimes are those under Spanish Penal Code affecting life, liberty, indemnity or sexual freedom, integrity persons or property, provided they were made with violence against objects, or violence or intimidation in people, as well as the cases of organized crime» (Díaz Lafuente 2014, 69-92).

The new Law has also abandoned the discretionary power on authorizing the residence permit for humanitarian reasons which prevented a procedure for examining the protection needs except for refugee status. Scholars have con-

sidered that the extension to subsidiary protection of the asylum procedure has been an undoubted advance to which Spain was not required under EU law as the Procedures Directive, unlike the Qualification Directive, only applies to refugee status (arts. 1 and 2; see Sánchez Legido 2010, 32).

The guarantees which must be respected in the process are another area in which there have been significant advances in the new law. This is the case for example with the specification that the information to asylum seekers will be «in a language they can understand» (art. 17.3) and not in «a language that can reasonably be expected to understand» as merely requires the directive (art. 10.1.a). The same is true of the rule establishing that the date of the application for protection is the starting date for counting of deadlines for processing (art. 19.5), and not the date of the submission of the application, which avoid asylum seekers to bear the consequences of delays in the formulation of the application due to the Administration.

Another achievement in the new law is the establishing of the aim to be pursued in the interview by which the application is formalized in the Office of Asylum and Refugees (OAR), which is to assist applicants to complete the application and collaborate with them to establish the relevant facts (art. 17.6). As required by the Directive, the Law 12/2009 includes as guarantees the confidentiality of personal hearing (art. 16.4 and 26), the staff competence (DA 3rd), the right to an interpreter (art. 16.2), and the individual character of the hearing.

To address the practice developed under the previous Act, the Law 12/2009 introduces significant improvements to the right to legal assistance. For example, the Act provides that legal aid will be extended to the formalization of the application and all the proceedings (art. 16.2.1). Consequently, the law puts an end to a widespread view in the Administration according to which legal aid was not necessary for the initial phase, but was conceived for a later stage (Sánchez Legido 2010, 34). The new law has also established that legal assistance shall be mandatory in border procedure (art. 16.2.2). The particular vulnerability in which are commonly found the applicants newcomers at a border post, as well as the situation of deprivation of liberty to which they are subject as a result of the ban on access to Spanish territory and the extraordinary speed of its processing, make legal aid in these cases particularly necessary (Pérez Sola 2012, 613). Finally, the new law puts an end to unjustified restrictions of legal advisers access to the facilities of border posts and the immigration detention (art. 19.4).

Another improvement introduced by the new Asylum Act which is not required by EU legislation has been to grant suspensive effect to administrative appeals against the decisions of reject of admission or dismissing, which under the previous law did not exist, causing return or expulsion in the form of return, removal, expulsion or compulsory departure or transfer of failed asylum seekers. The only exception in previous legislation was that the resolution had been delivered in a border procedure in which UNHCR had supported the acceptance

of the application. The suspensive effect however is not automatic and must be requested (Sánchez Legido 2009, 21).

The new law has marked however some backward steps over the previous legislation. The first is the elimination of the possibility to seek protection at embassies and consular offices of Spain abroad (Galparsoro 2010, 82; García Mahamut 2010a, 82). Because of the tightening of borders control it is increasingly difficult for asylum seekers to make their application on European soil. Spain has also raised border walls, promotes and finances the strengthening of controls on the outflow of immigrants by sea in third countries, aides the creation in them of detention centers and penalizes transport companies that bring asylum seekers on European soil without the proper documents and whose application has not been declared admissible.

As for grounds for refusal of leave under the new law, the legislator has opted for a more protective model than the previous law. In this new legal framework, the mere granting of protection in a third country or the mere transit through the country are circumstances which do not allow itself the refusal of the application, especially if that third State does not offer effective guarantees of human rights and refugee protection (Borrajo Iniesta 2012). On the other hand, the concepts of first country of asylum and safe third country do not exclude the right to an individual examination, objective and impartial of the application, since it is one of the essential guarantees of the Asylum Procedures Directive (art. 8.2.a). Thus, if one takes into account the speed of these procedures, it must be draw as an inevitable consequence that the reasoned invocation of plausible circumstances that question the respect of those guarantees in the third country, should be sufficient reason for the application to be not accepted for processing and examined at greater length under the ordinary procedure. An application of this type would not fit in those admissible in accelerated or abbreviated procedures, since such application must be, as noted by the Executive Committee of UNHCR, «those which are clearly fraudulent or not relate to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention Relating to the status of Refugees nor to any other criteria justifying the Granting of asylum».

The new law introduces therefore indisputable improvements such as a better definition of the circumstances of eligibility for the recognition of the right of asylum, extending the grounds for recognition, or the proclaimed willingness to participate in resettlement programs (García Mahamut 2010b). Also noteworthy the unification almost complete from procedural and substantive point of view of the right of subsidiary protection as well as the undoubted improvements in the field of procedural safeguards, as with legal aid and the postponement of the enforceability of decisions of inadmissibility or denial in case of judicial challenge.

## 2. PROCEDURE

According to art. 4 of Royal Decree 203/1995, of 19 February, the asylum application must be filed in person at the offices of asylum and refuge, at the border of Ceuta and Melilla in foreign offices and police stations. People who are in immigration Detention Center may also lodge asylum application by communication to the Center Director. Applications must be filed within one month from the entry into national territory (art. 17.2 of Law 12/2009), although the appointments are delayed between 5 and 7 months. By emergency procedure the admission to process of the application must take place in four days, while the normal term is 1 month (art. 21). The silence of the administration implies positive effects.

The Processing of asylum applications follows these key lines: the submission of the application determines the initiation of the procedure and the prohibition of rejection at the border (Ruiz Sutil 2016) or expulsion from the territory of the asylum seeker until effective resolution of admission or inadmissibility has been issued (although in the meantime precautionary measures can be taken wherever applicable; see Moya Malapeira and Hernández Calero 2012).

Such a procedural legal relationship generates for foreigners specific duties besides the right to be informed about their rights and, in particular, the right to legal assistance (Navarro Gandullo 2006): the full cooperation with the authorities for accreditation and verification of their identity and of the facts and arguments relied on in support of the application as well as the duty to report – as soon as possible – on his residence or any change in it and on members of the family group. The processing is the responsibility of the Minister of the Interior, but the formulation of the resolution proposal is the responsibility of the Interministerial Commission established within the Minister of the Interior. The power for the final decision lies on the Minister of the Interior except in cases of disagreement with the proposal in which the decision shall be taken by the Council of Ministers (which proves the protective nature of the intervention of the Interministerial Commission).

Under previous legislation, the enjoyment of certain social benefits stemmed from the filing of the application, including the possibility of employment, as enshrined in the Immigration Regulation. The members of vulnerable population groups (single parents, elderly, disabled, etc.) could also receive social assistance from the time of filing the request for asylum. When asylum seekers were under eighteen and were in a situation of distress, they were under the protection of the competent services, having being communicated their situation to the Prosecutor, as well as a guardian were appointed who represented them in the corresponding procedure.

The inadmissibility of application was subject to review, which was justified when new facts were presented or when the facts that prompted the application were specified in more length.



The immediate effect of the inadmissibility was notification of the rejection, which was accompanied by the order of compulsory departure of the petitioner or expulsion when applicable, except when the petitioner fulfilled the requirements of the legislation on immigration for stay in Spanish territory or when a humanitarian or public interest exists, in which case the Minister of the Interior could authorize, at request of the Interministerial Commission for Refugees and Asylums, their stay in Spain for not less than six months. The reform introduced by Royal Decree 2939/2004, of December 30th, which amended the content of Article 31 of Refugee and Asylum Regulation allowed the Minister of the Interior to approve the stay in Spain when “serious and reasonable grounds to determine that the return to the country of origin would be a real risk to life or physical integrity of the person”.

The resolution declaring the inadmissibility needed to be motivated and to be adopted on a case-by-case basis, besides informing the applicant of the options that the system offered after the rejection.

Thus, the asylum-seeker could request a re-examination of the application or leave the country, but in the latter case the processing of the application could continue through the Spanish embassy in the country which the asylum-seeker has reached.

Especially controversial resulted in the past the provision regarding the submission of the application for asylum at the border, since legislator had foreseen the remain in it of the applicant while this procedure were resolved. Indeed, the asylum seeker, which submitted the request at the border, could not be expelled while not solved the admission procedure and should remain at the border post in adequate rooms, the stay should not last more than seventy-two hours since the filing of the application.

This issue was the subject of a constitutional appeal raised by the Ombudsman and resolved by the Constitutional Court in judgement no. 53/2002. In this regard, the Constitutional Court considered that such provisions were «provisional modulations restricted to the way in which certain individuals enjoy, in very specific and not generalizable circumstances, of their right to personal liberty».

Under the previous Act, once made filed the application at the border, the asylum seeker could make request, within twenty-four hours from notification, for review of his application, being suspended the effects of the refusal decision (Domínguez Luis y Nieto Menor 2003).

The resolution that decided the request for review ended the administrative procedure and could be appealed to the administrative courts; the bringing of this action produced suspensive effect of the administrative act, provided that the asylum-seeker declared his intention to lodge an administrative appeal and that the representation in Spain of UNHCR had issued a favourable report on the admissibility of the request. The entry and stay in the country were then authorized until courts resolved on the suspension of the administrative act.

The previous Law on asylum provided that the stay in Spain could be authorized on humanitarian grounds or public interest despite the inadmissibility or the refusal of the application (art. 17.2); although the legislator placed particular emphasis on those who although do not yet meet the requirements of the law «as a result of conflict or serious disturbances of political, ethnic or religious nature», would have had to leave their country but whose return was not possible with the due guarantees in the present situation in that country. The inadmissibility determined the border rejection of the asylum seeker and their return to the point of origin (Julien-Laferriere 1990).

However, when immediate refoulement could not be carried out due to insufficient documentation or the unavailability of adequate means of transport, the entry into national territory can be adopted notwithstanding precautionary measures that deemed appropriate to the case. However, despite the rejection of the asylum application, it could be agreed by the Minister of the Interior to enter the country and stay in it for humanitarian reasons and for a period not less than six months (Salamanca Aguado 2009).

Under the new Law 12/2009 two aspects are especially noteworthy: the regulation of applications for asylum in embassies, and care for people with some kind of special vulnerability, added to their status as asylum foreign seekers (Morgades Gil 2010). The regulation of submission of an application for international protection in embassies is incomplete and does not clarify neither the determination of the specific conditions of access to an asylum procedure nor the procedure to be followed by ambassadors to assess relocation needs, nor adequate guarantees for seekers (access to interpreter, legal aid, etc.) are established.

The most criticized aspect regarding the proposed regulatory regulation of the rights of the asylum seeker is related to insufficient regulation of legal assistance. The possibility of access to a lawyer for the asylum seeker both before and after submit of the application at the border or in detention centers is not envisaged as well as essential aspects of legal aid are not included<sup>1</sup>, such as the fact that the appointment of attorney should allow enjoy legal aid in the initial application, in the reassessment and in the appeals<sup>2</sup>.

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<sup>1</sup> Royal Decree 162/2014 approving the Regulation of Operation and Internal Affairs of the immigration detention states that income may only be made by a decision of the competent judicial authority in the cases and with the effects provided in the Act organic Foreigners. It may not exceed 60 days.

<sup>2</sup> In particular, the detainees asylum-seekers are accorded, since its admission and during the time spent in the center, the following rights: to be informed in a language they understand; to respect for their dignity and integrity; the exercise of the rights that the law recognised them (especially those established by international protection); to not be discriminated against for any reason; a medical and health care; to communicate the admission or transfer to the person chosen, a lawyer and to communicate with him; to communicate with their families; to an interpreter; to be accompanied by their minor children; a contact with non-governmental organizations, to make two free telephone calls at his entrance, to submit complaints and petitions to defend their rights and interests; the protection of personal data, especially data on the health of each person; to lodge complaints and petitions and appeals, in the registration of the center

Art. 19 of Law 12/2009, para. 4, provides that persons who have applied for asylum have the right to meet with an attorney in immigration detention centers (CIE) in order to learn about the formalization of the asylum application (Donaire Villa 2012, 517). Art. 25 of Law 12/2009 on the processing of emergency provides that applications for asylum lodged in a CIE shall conform to the procedure established for applications at border posts. Once admitted such applications will be dealt by the emergency procedure. Art. 34 provides that UNHCR (United Nations High Commissioner for Refugees) may have access to applicants for international protection who are in immigration detention centers. The submission of applications for international protection will be communicated to the UNHCR, which may obtain information on dossiers, and may be present at hearings of the person who requested the protection as well as may present reports for inclusion in the dossier of the applicant.

### 3. THE ADAPTATION TO EUROPEAN UNION LAW

The need to reach a joint interpretation of refugee definition, of subsidiary protection and the adoption of a single asylum procedure currently constitute the major challenges facing the European Union in this area (López-Almansa Beaus 2014). In fact, the adoption of the Common European Asylum System (CEAS) should allow the alignment of rules on the recognition and content of refugee status as well as the adoption of measures relating to other forms of subsidiary protection for those persons in need of protection (Santolaya Machetti 2006). With the approval of the European Pact on Immigration and Asylum at the European Council of October, 15th 2008 it was intended to give a new impetus to EU policy on asylum in the European Union and was continued with the Stockholm Program.

The option of current Dublin Regulation III is the result of incorporating the second phase of the CEAS to the ECJ case law in the K case, in which the Court addressed the extent to which a State was obliged to hold together or reunite a refugee dependent regarding, in the case, her mother-in-law. The ECJ considered that the mention in the Dublin II Regulation (343/2003) to the fact that states “normally” would be required to reunite this kind of people meant, if there was a relationship of dependency (of the applicant with regard to refugee or vice versa), and if family ties existed in the country of origin, that states could only «stop applying this obligation to keep together people interested whether that non application is justified by the existence of an exceptional situation». In Dublin III Regulation, dependence is foreseen both in case of parents and sons (regardless of age), as well as brothers.

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itself, must having the center a logbook of requests and complaints. In this regard, a request for a personal interview with the center’s director may be submitted.

Through Law 12/2009 of 30th October, on the right of asylum and subsidiary protection, the Directives 2004 and 2005 were transposed, as well as Chapter V of the Directive of 2003. In addition with this Act the measure 108 of the First National Plan for Human Rights (2008) is deemed to be fulfilled, as set out in the European Pact on Migration and Asylum., whose fourth commitment refers to the distribution between the states of those who have obtained the status of refugee and to relocation policy, in close collaboration with UNHCR, which will be re-launched in order to relocate in the territory of the Union European people who are under the protection of that body abroad.

It should be recalled that resettlement programs are not a substitute for, or incompatible with, individual asylum systems. It is about complementary policies that give answers to different needs. National systems for determining refugee status of persons applying for such protection are the mechanism through which States meet its international obligations by providing international protection to those who arrive on its territory claiming such protection. Resettlement policies, on the other hand, are a manifestation of voluntary solidarity of States towards refugees and towards the countries of first asylum.

The first additional provision of the new LAPS (Law on the right of asylum and subsidiary protection) states as follows: «The framework of protection under this Act shall apply to persons covered in Spain under resettlement programs developed by the National Government, in collaboration with the high Commissioner for Refugees United Nations, and, where appropriate, other relevant international organizations. The Council of Ministers, on a proposal from the Minister of the Interior and Labour and Immigration Ministers, once heard the Interministerial Committee for Asylum and Refuge, shall adopt annually the number of persons who may be subject to resettlement in Spain under these programs. Resettled refugees in Spain have the same status as refugees recognized under the provisions of this law».

Spain thus responds to one of the challenges inherent the Common European Asylum System (CEAS) in which the resettlement is an important part of the external dimension of asylum policy of the European Union, understood as an instrument that contributes to solving protracted situations and difficult humanitarian emergencies. It is not to be forgotten that resettlement is considered the last resort for the refugee who can neither return to their country of origin nor remain in the third country with security guarantees. Neither can it be forgotten that these refugees are precisely the most vulnerable (children, single women with children, people traumatized or seriously ill).

The Law 2/2014 of Action and the State Foreign Service, March 25th, has amended the para. 1 of art. 40 resulting an extension of the expectations of enjoying the right to family life in two cases: In the case of children with respect to their parents refugees or with respect to the beneficiary of subsidiary protection, since the requirement of dependence of the former with respect to the latter is removed; and in the case of unmarried minors beneficiaries of international pro-

tection with respect to adults who are not ascendants and are responsible for the minor (in any case the extended family as a child's right is articulated, but states that it is the Spanish administration who "may" ensure the restoration of the family unit in these cases). The new text improves the wording and clarity of the cases in which the asylum or subsidiary protection by family extension would apply, and the circumstances that would justify their exclusion in each case (Sales i Jardí 2016).

The first resettlement program based on this provision was approved on 7th October 2011 by the Council of Ministers which authorized the resettlement up to hundred refugees. The second resettlement program based on the provision of Law 12/2009 was approved on December 28, 2012, to be implemented between 2013 and 2014. Upon request by UNHCR to Spain to increase the quota of resettlement, especially for Syrian refugees, by the saturation of camps closer to places of conflict in Lebanon, Jordan, Turkey and Iraq, the Cabinet approved the third program of resettlement of refugees in Spain to receive up to one hundred refugees from Syrian conflict. This resettlement program is part of the Joint Program of the European Union for resettlement, which provides for the determination of annual geographical priorities, in addition to providing resettlement of refugees from countries or regions with regional protection programs or identified to establish refugees. The Council of Ministers approved in December 2014, the last resettlement program for 2015 so far, for a total of 130 refugees fleeing from the Syrian conflict who are in neighboring countries in the region (equal to the total number for the previous year).

Regulation of the Law of 2009 should provide Spain with the instrument of transposing, at least, the three main Directives of the second phase of the CEAS (Directive 2011/95/EU Directive 2013/33/EU Directive 2013/32 / EU) and Dublin III Regulation (Regulation (EU) No 604/2013), although the text of the draft bill expressly refers only to the Directive on requirements for refugee status or subsidiary protection benefit (Directive 2011/95/EU). The overall objective of the Regulation of Asylum Act is to provide security to the legal administrative processing and, if necessary, granting international protection with a detailed regulation, both the procedure and the protection status.

Directive 2013/33/EU refers specifically to the conditions attached to the reception, ie. the initial period of the asylum seekers in the Member State of reference, during which they need greater attention and support because of their recent arrival and given that the legal constraints that determine that they still cannot procure for themselves the means of life. It is noteworthy that this standard, fully effective on July 21, 2015, establishes important provisions that require that «the Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection» (art. 17.1) providing, likewise, «an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health» (art. 17.2). However, Spain has not established nor legal nor adequate

material support to the obligation imposed by the Directive. In fact, at present the reception conditions of asylum seekers are laid down in Chapter III of the Act 12/2009, which opens the art. 30.1 which states that «it shall be provided to applicants for international protection, social and hosting services necessary in order to ensure the satisfaction of basic needs in dignity if they lack of economic resources» (art. 30.1). However, the development and realization of all this it has been referred to a statutory regulation still nonexistent (art. 31.1 of Act 12/2009).

With the Directive 2013/33/UE is intended to set a series of reception conditions that the Member States should take into consideration while applicants are waiting for the review of their applications, conditions that must be coupled with a decent standard of living (Pérez González, Ippolito 2016). The intention not to encourage secondary movements plays an important role in the adoption of the text.

This directive has replaced the previous Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in the states members. With the adoption of this text it is intended to prevent that reception conditions do not have a poor effect for applicants for international protection and also contains a number of notable changes.

The scope of the directive has been enlarged to all applicants for international protection at all stages of the process, including also procedures subject to Regulation Dublin III. Thus, the directive now applies to the border, territorial waters and transit zones; previously Directives only mention the border and the territory of a Member State.

On the other hand, Member States shall provide legal assistance and free legal representation with the aim of ensuring effective judicial protection in appeals against the decisions of granting the asylum, withdrawal or reduction of benefits of the directive, although it cannot be provided if the State considers that it will not reach a favorable outcome (art. 26).

Given the categories of people who can fit within the scope of the directive it can be deemed that if the directive on temporary protection would be applied, refugees, people fleeing armed conflict, violence and violations of human rights could be protected as groups under the implementation of the directive for a period of three years. The directive provides a temporary protection status conferring temporary residence permits, health insurance emergency shelter, social services, education for children as well as a limited access to the labor market and a right to limited access to family reunification (Pauner Chulvi 2011, 104). These rights standards suggest some better protection than those received by asylum seekers and migrants in Greece and Italy. A substantial number of Member States, rather than implementing temporary protection under a formalized scheme, have opted to introduce a national model of temporary protection.

In April 2016 the intentions to reform the Common European Asylum System (CEAS) have been resulted in a Communication from the Commission to the European Parliament and the Council. The main problems of the current

regulation focus on the inability to achieve an equitable distribution of applicants when they involve a large number (Thielemann, Williams, Boswell 2010), and the difficulty of preventing secondary movements within the territory of the EU (Collett 2014).

Although the CEAS' main objective was to establish a common asylum system in the EU, is still far from being achieved, since the reforms of the domestic systems are being slow, and since the demand for harmonization leaves room in practice for modulating the implementation of legislation for reasons of internal security (Brouwer 2013) or by expanding the list of countries considered safe (De Lucas Martín 2016).

The creation of a corrective mechanism of allocation has been called "equity mechanism" which allows considering that an EU Member State is managing a large number of asylum applications if it exceeds 150% of a reference amount with regard to the size of the country and its wealth. In this case the corrective mechanism allows the relocation of applicants from this country to other EU States. The new Dublin system should reduce the time of transmission of requests for transfer, reception response and execution of transfers between EU Member States, besides of being suppressed the possibility of change of responsibility (Chetail, De Bruycker, Maiani 2016).

Other measures to address the reform of Dublin focus on preventing abuse and secondary movements, what is known as asylum *à la carte*, on improving the provisions concerning the rights and obligations of the asylum seekers, and also ensuring the interests of minors accompanied (López Ulla 2013) and practices aiming to achieve family reunification (Gómez-Urrutia 2006).

The Commission has proposed that the current EASO (European Asylum Support Office) becomes a European Agency for Asylum (Morgades Gil 2015b). Among the tasks to be referred to this new institution, once modified the Dublin system, are suggested the use of the aforementioned reference amount which will determine the implementation of the mechanism of equity.

Convergence when assessing applications at EU level, cooperation and exchange of information between EU States, the potential deployment of teams of asylum and the support and willingness to provide technical and operational assistance to those States that are in a situation of disproportionate pressure in its asylum are other functions that would assume this Agency.

A second issue of particular importance in access to asylum is the international protection in Spain of nationals of Member States of the European Union. With the transposition of mentioned Directives 2004/83/EC and 2005/85/EC, the Law 12/2009 determined its subjective scope in nationals of third countries and stateless persons. This was one of the reasons why the Ombudsman was asked to present appeal of unconstitutionality, against the above law, understanding that it excluded the possibility of applying for asylum to nationals of EU Member States. However, according to that institution the inability for citizens of the

Union of benefiting from international protection in Spain, does not correspond “fully with the norm”, therefore he did not file an appeal of unconstitutionality.

To achieve the correct implementation of the different phases of the CEAS and to consolidate it in Spain, it is essential the 110th measure envisaged in the first National Human Rights Plan, which according to its assessment in November 2012 should be continued. In fact, it is essential to establish a training program for judges, prosecutors, officials of the Administration of Justice, lawyers, police and civil society, on the issue of international protection of refugees (Solanes Corella 2014). This commitment in the National Human Rights Plan was incorporated in the Additional Provision Three of Law 12/2009 on Asylum.

#### 4. THE EFFECTS OF GRANTING ASYLUM

The grant of asylum or subsidiary protection implies (art. 36 of the LAPS) the recognition of the rights enshrined in the Geneva Convention relating to the Status of Refugees, in the current legislation on foreigners and immigration, as well as in the regulations of the EU and, in any case, a number of rights such as:

- a) protection against refoulement under the terms established in international treaties signed by Spain;
- b) access to information on the rights and obligations related to the content of international protection granted, in a language that is understandable to the beneficiary of such protection;
- c) the residence and permanent work authorisation, in the terms established by the Organic Law 4/2000 of 11 January on the rights and freedoms of foreigners in Spain and their social integration;
- d) the issuance of identity and travel documents to those who has been recognized the refugee status, and, when necessary, to those who benefit from subsidiary protection;
- e) access to public employment services;
- f) access to education, healthcare, housing, social assistance and social services, to the rights recognized by the law applicable to the victims of gender violence, where appropriate, to social security and integration programs, under the same conditions as Spanish (Triguero Martínez 2010, 201);
- g) access, under the same conditions as Spanish, to continuing or vocational training and work practices and procedures for recognition of diplomas and academic and professional certificates and other official transcripts issued abroad;
- h) freedom of movement;



- i) access to integration programs with general or specific nature to be established;
- j) access to assistance programs for voluntary return that may be established;
- k) the maintenance of the family unit in the terms provided in the Act and access to support programs that may be settled for that purpose (Sánchez-Rodas Navarro 2006).

In addition, they will still benefit from programs and services in order to facilitate their integration.

On the other hand, the special situation of asylum seekers in Ceuta and Melilla is relevant. The European Commission against Racism and Intolerance (ECRI) had already expressed the Spanish authorities concerns about the situation of people who came to these cities. Thus, in its third report, the ECRI made various recommendations: that the Spanish authorities must investigate the situation including attention to immigrants and asylum seekers from sub-Saharan Africa trying to reach Spanish territory through Ceuta and Melilla; that authorities would ensure that the right of people to access to the asylum procedure is fully respected in practice; that they must redouble their efforts to provide training on human rights to the border authorities and law enforcement officials established in Ceuta and Melilla, including the right not to be discriminated and the right to seek asylum; and that they would ensure that no one was “deported” of Ceuta and Melilla, which will contravene art. 3 of the European Convention on Human Rights and the principle of non refoulement. Recently, the Final Provision 1.1 of Organic Law 4/2015, on Protection of public safety, has included the 10<sup>th</sup> Additional Provision of the Aliens Act, according to which aliens detected on the border line of the territories of Ceuta and Melilla while trying to cross the border irregularly, may be rejected in order to prevent their illegal entry into Spain.

The Special Rapporteur of the United Nations on racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteerem made an official visit to Spain in January 2013 in which drew attention to the reality of specific groups that are often marginalized, as immigrants and asylum seekers. Regarding the situation of asylum seekers in Ceuta and Melilla, the Rapporteur highlighted the difference in treatment they receive compared with asylum seekers in different parts of Spain: they have no freedom of movement for the Spanish territory and they are not allowed to go to the peninsula until a decision on their asylum claims has been taken, which can take from six months to several years. This situation may be prompting some people who need international protection not to seek asylum or to waive their applications in order to cross the peninsula and risk their lives in the attempt in some cases (González García 2015, 321). As the rapporteur pointed out: «In the opinion of this institution, the explanation provided in the report is not sufficient to prevent the free movement within the national territory of the asylum seekers who have been admitted to the request». Finally, the High Court of Andalusia has declared null and void administrative

detention measures in Ceuta applied to people whose asylum applications have been deemed admissible.

The increasing complexity of so-called mixed movements in which people move using the same routes with different objectives and means of transport or the services of the smugglers, is a major challenge. Identify refugees who are in irregularly mixed flows can be extremely complex, especially when the same individuals have no single reason for mobility. Once they are identified, refugees need protection against refoulement and access to durable solutions (Fernández Pérez, 2014).

One of the keys in the identification of asylum seekers is their almost automatic consideration, a priori, as economic migrants. In 1994 a reform of the effects of the refusal of asylum was carried out in order to avoid the situation of privilege of those subject to this specific legislation compared with the normal foreigner, with the consequence of attracting economic migrants to the asylum system. Here it is where we can show more clearly the tension between status of asylum-status of immigrating as a cause of the legal reform.

The effects of the negative decision are now specified in leave the country, unless the conditions to enter or remain in accordance with the general regime of foreigners or those of exceptional referred to reasons of humanitarian or public interest are met.

Another of the groups in which the lack of proper identification is concerning is that of minors. UNHCR recalls some basics in the case of minors potential asylum seekers, including: it is vitally important to immediately detect the presence of any unaccompanied minors among foreigners entering the country, putting their cases to the competent authorities in child protection; tests to determine the age which generally are made to unaccompanied minors are not accurate because they do not take into account racial aspects, ethnic, nutritional, environmental, psychological and cultural, that have a direct influence on the development and child's growth (Alonso Sanz 2012, Claro Quintans 2010, Belinchón Sánchez 2006, Arce Jiménez, 2006).

To promote good practices in this regard the so-called plan of 10 points of UNHCR has been launched, under which Spain has carried out various activities that are part of the catalog of good practices, some related to sensitive entry systems protection. However, despite efforts in recent years, confusion persists especially among certain groups to identifying potential asylum seekers.

As regards to the applications in border and, in particular, those that have been processed but rejected by the Office of Asylum and Refuge (OAR), even with a favorable report from UNHCR, it is important to consider the role being played by the European Court of Human rights in order to guarantee the rights of applicants against a possible expulsion (Guild 2004, Staffans 2010). The OAR believes that human trafficking is not subsumed in the institution of asylum, even though the official interpreter of the 1951 Convention believes otherwise and therefore, although there are evidences, decides to reject the application and reassessment.

Another reason used by the OAR when refusing requests at the border, is the fact that applicants express their intention to seek international protection once it has been denied access to Spanish territory, when in fact this motivation has no legal basis. In this situation, it is essential to stress that the mentioned measure 110 of the First National Plan on Human Rights will continue to be developed. This is a matter to be reviewed in the Spanish practice in the light of the proposed interpretations from an international dimension which provides a more extensive protection of the rights of applicants.

The Minister of the Interior also may refuse applications for various reasons legally established for that purpose, including, where the examination of the application does not correspond to Spain according to the aforementioned Dublin Regulation and other international conventions ratified by Spain (Morgades Gil 2014). In this case, the Ombudsman found that sometimes applicants await the transfer to the General Headquarter for Immigration and Border. Until the transfer is done to the country responsible for addressing the application, the asylum seeker is in a situation of undesirable vulnerability. This contrasts with the protective spirit that should prevail in asylum procedures and the accountability of the State in the reception of asylum seekers. In these cases, the asylum application has not been addressed in depth yet, so that the applicant lacks protection in practice until the transfer is made, which means that in many cases these people can fall into marginality lacking aid, and can be arrested and placed in detention centers (Ilesic 2013). Therefore, as that institution pointed to the General Secretariat for Immigration and Emigration, we must insist on the need to consider these people must enter in a Refugee Reception Centre (CAR) until the transfer becomes effective. Spain, like Austria, Sweden, Estonia and Greece, does not have appeal with suspensive effect, which has entailed a condemnation by the ECtHR<sup>3</sup>. Nine other States, such as the Netherlands and Italy, provide for the suspensive effect on any of its courts, while other fourteen states, including Portugal, foresee the suspensive effect in all instances (Bay Larsen 2016).

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<sup>3</sup> See *AC and Others v Spain*, Application no. 6528/11. The 30 applicants, all of Sahrawi origin, arrived in and lodged applications for international protection. They had reached Spain's Canary Islands on makeshift boats between January 2011 and August 2012, having fled their camp in the Western Sahara after it was forcibly dismantled by Moroccan police. The 30 applications were rejected, as were the applicants' subsequent requests to have them reconsidered. The applicants then applied for judicial review of the decisions to reject their applications, at the same time seeking a stay of execution of the orders for their deportation. After ordering the administrative authorities to provisionally suspend the applicants' removal, the *Audiencia Nacional* rejected the 30 applications for a stay of execution. Following requests by the applicants for interim measures, the European Court indicated to the Spanish Government under Rule 39 of the Rules of Court that the applicants should not be removed for the duration of the proceedings before it. The *Audiencia Nacional* rejected the applications for judicial review lodged by some of the applicants, who then appealed on points of law to the Supreme Court. By the date of its judgment, the Court had had no information as to the outcome of those appeals. The ECtHR found a violation of Article 13 of the Convention.

According to the Geneva Convention (arts 32 and 33.2) in the event that the individual who looms a threat to security or public order meets the requirements to be considered a refugee, a balancing can be made and, if the threat is very high, it can get to justify the return to the country of origin of the refugee. In contrast, such return is not possible when the asylum seeker meets the requirements to be covered by subsidiary protection, at least when there is a real risk that the asylum seeker may be subjected to torture or inhuman or degrading treatment (Morgades Gil 2015a). Those people are in a kind of legal limbo and should probably request the authorization or residence on humanitarian grounds referred to art. 37.b of the law. The protection of a certain idea of the security of the host society and the migration challenge (even if forced migration) continues to have an important role too.

As for the regulation of illegal entry attempts in Spain, the Constitutional Court in its judgment 17/2013, dated 31 January, analyzed the nature of the return, and established that return is not, in legal and technical sense, a sanction but a measure gubernatorial of immediate reaction to a disturbance of the legal order, articulated through a flexible and fast way. Despite flexibility and speed, the resolution adopting the return must also respect the guarantees provided by the general law on administrative procedure. The Constitutional Court refers specifically to the need for the decision issued in the return procedure to attend the principles of publicity of law, contradiction, hearing the person concerned and a reasoned decision. With regard to immigration procedures, the mentioned STC 17/2013 also established that there is no right to complete the processing of an administrative proceeding on foreigners which should conclude, in any case, with a decision on the merits.

On the other hand, Directive 2013/32/EU on procedures, provides that the main guarantees that must be taken into account in the development of the procedure in order to ensure effective access to the examination procedure, must include adequate training to officials who first come into contact with persons seeking international protection, in particular those carrying out surveillance of land or maritime borders or carrying out border checks. In addition, Member States should strive to identify applicants in need of special procedural guarantees (on grounds, among others, of age, gender, sexual orientation, gender identity, disability, serious illness, mental illness or consequences of torture, rape or other serious forms of psychological, physical or sexual violence).

It is urgent the modification of the operating criteria of the officials responsible for border control in order to deliver to the National Police people detected trying to enter illegally into the national territory in order to carry out the formalities established by the law of immigration and in order to inform immigrants about the possibility of requesting international protection.

The development of immigration provoked by political and economic causes has led to the emergence of new categories that fall outside of the Geneva Convention of 1951, such as refugees “in orbit”, de facto refugees, economics

refugees, those fleeing natural disasters, among others; this has led to an assimilation of the figures “asylum” and “refuge”.

Seven years later, the Spanish law on asylum still does not have a regulation that develops it, and does not incorporate the European directives on the second phase of the Common European Asylum System. Last September 2015, the European Commission announced its intention to initiate the infringement procedure for failure of Spain in the implementation of the Directive on requirements for asylum (2011/95/EU), having ended the deadline for transposition in December 2013. Likewise, the European Commission has directed letters of formal notice in relation to the transposition of the revised directive on asylum procedures (3013/32/EU) and of the Directive on reception conditions (2013/33/EU), the deadline for transposition expired on 20 July 2015.

Neither the Law 5/1984 which for the first time regulated the right to asylum enshrined in the Spanish Constitution nor its implementing regulation of 1985 established what should be the reception conditions or the aid provided for applicants during the processing of their asylum claim. After its reform in 1994 neither the law nor the new regulatory development of 1995 also established a reception system for asylum seekers. It is only in 2005 – and after amendment through the Regulation implementing the Law on Immigration – when Regulation on asylum introduces the possibility for applicants to benefit, provided that they suffer from a lack of financial resources, social services, educational and health provided by the competent authorities, within their means and budget availability. The possibility of establishing special or general programs to facilitate the integration of refugees, in case they have no means of subsistence is also envisaged. However, it is configured as a facultative aid and not as a subjective right of the applicant.

Before the vacuum in the law and the absence of regulation, over the years a system of hosting has been developed by rules of low rank emanating from the Ministry of Employment and Social Security, mainly through a Ministerial Order of 1989 developed through a resolution in 1998. These are, therefore, the body rules by which the reception system for asylum seekers in Spain is established (Monereo Pérez 2016).

The operation of the Office of Refugee presents deficiencies affecting the processing of files which affect the quality of the procedure. Some of them, such as delays in resolving applications for international protection and notification, disturb the processing of reception resources. The increase in applications for international protection causes major delays in the granting of appointments for that process and causes damage to the applicants. There are gaps in information on international protection; especially the lack of a gender perspective in the information provided and in a language not tailored to people with a low level of training. The number of applications for international protection filed by unaccompanied foreign minors in Spain is very low. A need has been raised to improve the training of staff serving in the child protection centers to provide adequate information.

## 5. SOCIAL INTEGRATION OF REFUGEES

Despite the provisions of the Dublin regulation, most applicants conceive Spain more like a transit country to the north of Europe as a place to settle. This reality basically responds to two intertwined aspects: adverse characteristics of the Spanish labor market and the lack of a model of long-term social and labor integration (Miñarro Yanini 2016).

One of the main obstacles is the legal access to the labour market (Gutiérrez-Solar Calvo 2003). Spain is one of the European countries in which the asylum application process is more intricate. The processing of applications is inefficient and causes delays in the decision process, with thousands of applications piling up in the Office of Attention to Refugees (OAR). A process that should last six months can get a year and a half, entailing the enlargement of the period of red card -the temporary accreditation granted to the asylum seekers- are granted so that they can start looking for work after six months from the admission to procedure of the application. This length has negative effects on the demand and supply of employment. On the one hand, employers feel that they are legitimised to offer temporary contracts until there is a final decision, and secondly, asylum seekers lose bargaining power, as well as the option to attest or enhance their studies through scholarships, for example.

For integration to be effective it is needed a long-term model. In Spain, the lack of regulation for the implementation of the law on the right of asylum and subsidiary protection (Law 12/2009), pending for seven years, is the biggest legal impediment to socio-economic integration of refugees and asylum seekers. In the absence of a model, the national integration system is basically funded through Royal Decrees (see e.g. Royal Decree 816/2015), which focuses on a service provider profile subject to circumstantial economic criteria rather than on an articulated system. The limited flexibility, with annual funding plans also creates mismatches between needs and resources. The system was designed for a small number of people.

On the other hand, the recognition of educational qualifications and professional skills is key to labour integration. While it is true that since the nineties Spain has moved towards the model of competency assessment, the Spanish labour market is still a certifying model, in which the process of recognition of qualifications and professional skills is dull and wearisome. In addition to the problems relating the lack of documentation due to the extreme conditions that the asylum process entails, temporary and economic costs should be added. Formal recognition of academic qualifications and validations, if it is resolved favorably, can last between two to four years depending on the particularities of each case.

Labour integration takes place locally, but in Spain the system is over-centralised. There is little synergy between the central and the regional/local administrations, although the autonomous communities have powers in areas that

directly affect the employment of refugees and asylum seekers (Donaire Villa, Moya Malapeira 2012).

In Spain the social protection of asylum seekers and refugees is carried out through joint direct participation of public resources and compacts with specialized organizations, as established by the National Plan for Social Inclusion 2013-2016. This protection has as central reference the stay in refugee reception centers (CAR) and the similar care establishments of NGOs that have signed an agreement. CARs are regulated by Order of January 13, 1989, developed by an Order of 13 January 1998. They are centers of temporary stay dependent on social services in which accommodation, food, social assistance and urgent psychological assistance are provided. These centers have therefore nature of comprehensive care centers of asylum seekers which are not limited to give them accommodation, but offer all necessary services during their stay and the necessary attention to their social integration, such as advice and information on validation titles, language teaching, information on the labour market, and professional contacts. To be welcomed in these centers it is necessary not to have infectious or mental illnesses that may disturb peaceful coexistence, to be asylum seeker and to lack of economic resources (art. 4 of the Order). Resolution 1998 also included as beneficiaries of these centers the refugees, although the rigorous application of the maximum period prescribed for the stay and because of the slowness of the procedure, it is rare the presence of refugees in the centers. Priority is given to stay in the CAR to couples with minor children, single parent families, individuals or families at high risk for socio-political reasons in their home countries, people with special psychosocial risks and those with non-communicable chronic diseases.

The length of stay, set to a maximum of six months (art. 5 of the Order), which for exceptional reasons can be extended, makes that measures provided for the reception are not applied correctly. The period of stay in effect coincides with that for work authorization (21st Additional Provision of Royal Decree 557/2011), so that there is a connection between both that suggests the legislator considers that after those six months, the asylum seeker or the refugees are now able to satisfy their material needs and that they are integrated. However, it is a period unrealistic because it does not take into account the length for the recognition of studies, the length of learning the language and especially something as obvious as the difficulty in finding a labour at 6 months of filing the application. It must be added that there are only 4 CAR belonging to the public network of migration, which is insufficient, so it has been necessary to use the Centers for Temporary Stay of Foreigners (CIE) although they do not have adequate infrastructure, provided that asylum seekers have the right to stay with their families (art. 4.2 of the Order), as these centers do not allow adequate family privacy (Martínez Escamilla 2010).

The same goes for financial aid, to which the applicants are only entitled during the six months following the application for asylum provided they remain

in the center. Besides, obtaining this aid it is dependent on the existence of sufficient credit (RD 865/2006) (Zambonino Pulito 2009, 402). For this reason the amount and types of aid are reviewed annually. The Decree of 2006 foresees the following kinds of aid: aid to cover personal first-need expenses, depending the amount on personal/family situation of the beneficiary, aid transport, aid for the purchase of clothing, health aid, aid for educational, training and leisure, aids to get administrative documentation; aids for interpretation and translation (Pardo Iranzo 2010), expenses following a death, aid to facilitate the autonomy of beneficiaries outside the center, aid for the subsistence of persons who began training courses.

Regarding professional training, the system established in collaborative agreements of public employment services with private employment agencies for the placement of unemployed people sets some requirements that favour large companies-agencies, leaving out of these programs most NGOs and associations to support vulnerable groups that are also employment agencies and are specialized in recruiting people with insertion difficulties such as applicants for international protection.

With regard to other services, such as education, health or social assistance, the system provided for foreign residents applies to asylum seekers (art.15.1 of RD 203/1995 for referral to arts. 9, 12 and 14 LO 4/2000 on the rights and freedoms of foreigners in Spain and their social integration). The enjoyment of these benefits and services are organised through registration, belonging to regional and local public services.

On the other hand, the art. 36 of Law 12/2009 establishes rights to social benefits attached to the refugee status, including the access to public employment services, education, healthcare, housing, protection against gender violence, and continuous and occupational training, among others (Alonso Moreda 2013). The implementation of these programs is organized by agreement with NGOs, leaving the concretion of funding subject to the availability of budgetary allocations.

Thus, from six months, the material support for integration becomes more uncertain, since it depends on the signing of compacts and protocols which, in turn, depend on budgetary availability. NGOs helping refugees apply comprehensive intervention plans – which also provide for material support – and that, even with variations, are generally divided into three phases, whose full length is 18 to 24 months. After the reception (which can last up to 9 months) these plans foresee an integration period (up to 11 months) followed by a third phase of eventual assistance.

The European Parliament resolution of 5th July 2016, dedicated to social inclusion and integration of refugees in the labour market, distinguishes, for legal purposes, those who have refugee status, asylum seekers, and those who are beneficiaries of subsidiary protection, and propose that integration policies to be put in place must be adapted and must take into consideration the specific needs of each group. The resolution notes that the possible integration into the



labour market cannot abstract from the reality of the labour market in the host country and the employment situation of insecurity and/or unemployment in which a part of the population can be, such as young people and long-term unemployed, so it is necessary to achieve a proper balance between supply and demand for labour, which for foreigners depends previously on the recognition of their training and their professional qualifications to enable them regularly access to market as well as it depends on training policies that would allow their adaptation, where appropriate, to the productive specificities of each territory, not to mention the high importance of knowledge of the language or languages of the host country.

The integration, will be only possible, as the European Parliament reminds, if the channels of legal safe migration are improved, and effectively implemented (unfortunately, that is not the reality) a policy based on solidarity and the effective sharing of responsibility between the Member States. Given the existing regulatory differences between refugees and those who migrate for economic reasons, the European Parliament advocates for establishing a clear distinction between the two, not to reduce rights of each group, but for the purposes of implementing the various European and international policies which pay due attention to the needs of each group. However these own rules should not mean in any case the creation of labour markets differentiated for refugees, or lower wages than those of the native population (proposals that in contrast are emerging in some countries). It should be noted that the integration of refugees may pose specific needs that are different from that of economic migrants and maybe more complex, by traumas that they can drag and their initial frequent complete ignorance of the country of destination.

The European Parliament has called for the creation of a “truly uniform” common European asylum system and legal migration policy in the Union, «comprehensive and sustainable legal migration policy in the EU that meets labour market demands in terms of skills, in which social inclusion and active integration policies play a central role global».

To facilitate the integration of third country nationals in labour markets of host countries it is necessary not only to implement policies that facilitate regular access to the labour market, but also to identify their skills, so it is necessary, according to the European Commission, a mapping of the skills profile of third-country nationals already living in the EU, as stated in a Communication issued on June 10th, and entitled “An Agenda for new skills and jobs: A European contribution towards full employment”. Concrete measures announced by the Commission are as follows: a) to launch a “Skills Profile Tool for Third Country Nationals”. The tool will assist services in receiving and host countries to identify and document skills, qualifications and experience of newly-arrived Third Country Nationals; b) to work with national authorities to support recognition of migrants’ skills and qualifications, including refugees’, support the training of staff in reception facilities to speed up recognition procedures, and promote the

sharing of information and best practices on understanding and recognition of skills and qualifications; c) to make available online language learning for newly arrived migrants, including refugees, through Erasmus+ online linguistic support (100.000 licences for online language courses will be made available to refugees over three years).

## 6. CONCLUDING REMARKS

Under the Dublin Regulation, Spain is in a key position for being a Southern European border, and therefore, the gateway from the North African route. Given the particular and enhanced protection of the right of asylum, it would be logical that the recognition procedure was simple and more flexible than the procedure for the regularization of economic migration. However, in Spain the procedure is underdeveloped and very slow (Morgades Gil 2015c).

Spain is a country that has traditionally accepted few refugees, arguing to have a large flow of economic migration. Since the adoption of the first Law on Asylum in 1984 Spain has given asylum to 180,500 people, representing 0.95% of asylum seekers in the EU.

In the current wave of refugees, which occurred also when many spoke of economic recovery in macroeconomic indicators and the exit of the crisis, some media have put the spotlight on the economic implications-whether positive or negative that the arrival of these flows of people may have. However, as it has been revealed repeatedly in some of the States with the greatest tradition of welcoming refugees, it is not the main challenge, but to establish effective mechanisms of social integration, since it determines either a failure or an opportunity.

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