

## SPAIN

Spain is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. Asylum seekers filed 7,926 applications for asylum during 2000; at year's end, there were 391 applications pending decision.<sup>1</sup> In 2001, 9,490 asylum applications were filed.<sup>2</sup> In the first quarter of 2002, there were 2,531 applications filed.<sup>3</sup> In Spain, there is no legal basis to detain asylum seekers, apart from the brief admissibility phase at the border, during which an initial determination is made on whether an application will be admitted to the full asylum process.<sup>4</sup> In other circumstances, detention must be approved by a court.<sup>5</sup> No information was available on the number of asylum seekers detained.

In-country applicants are not detained – if they are awaiting decision on the admissibility of their asylum application, they must find their own accommodations, and if they are admitted to the full determination procedure, they may stay at a reception center.<sup>6</sup>

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<sup>1</sup> U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 257, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

<sup>2</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, NUMBER OF ASYLUM APPLICATIONS SUBMITTED IN 30 INDUSTRIALIZED COUNTRIES, 1992-2001, (May 31, 2002), *available at* [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem\\_Xx8wwwwqwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem_Xx8wwwwqwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf) (last accessed Aug. 29, 2002) [hereinafter *Asylum Applications Lodged in 1992-2001*].

<sup>3</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+2wwBmelFXx8wwwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf> (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

<sup>4</sup> E-mail from Jon Zabala Otegui, CEAR Spain, to Thomas Jonsson, European Council on Refugees and Exiles (Sept. 10, 2001, 06:00 EST) (on file with Debevoise & Plimpton) [hereinafter CEAR Correspondence].

<sup>5</sup> *Id.*

<sup>6</sup> EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES at 258, 259, *available at* <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001].

Asylum seekers arriving by air must remain at an airport facility or hostel pending an admissibility decision for a maximum of seven days.<sup>7</sup> The initial decision on admissibility must be made and communicated to the asylum seeker within 72 hours. The claimant may appeal a negative decision within 24 hours, and the decision on review must be made and communicated within 24 hours. If the authorities fail to meet these deadlines, the application is automatically deemed admissible and the asylum seeker is released from detention.<sup>8</sup>

Asylum seekers whose claims have been rejected and are awaiting deportation may be detained.<sup>9</sup>

Spain also detains migrants and asylum seekers arriving at the Canary Islands at the detention centers Fuerteventura and Lanzarote, which have been criticized by Human Rights Watch for overcrowding, lack of telephones, poor medical conditions and absence of legal representation.<sup>10</sup>

After release from detention, asylum seekers are referred to reception centers where they may receive social assistance. Reception centers are run by NGOs as well as by the Ministry of Labor and Social Affairs' Institute for Migrants and Social Services. Asylum seekers do not have a choice as to which center they are referred to, though special needs are taken in account.<sup>11</sup> Single men, single women and families are accommodated separately.<sup>12</sup> There is no guarantee that space will be available in a reception center, and, consequently, some asylum seekers must find their own accommodation.<sup>13</sup>

The UNHCR representative in Spain is informed of all asylum claims submitted at the border and all applications for review of negative border decisions. UNHCR is entitled

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<sup>7</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION at 142 (July 2000) [hereinafter UNHCR EU REPORT 2000].

<sup>8</sup> CEAR Correspondence, *supra* note 4.

<sup>9</sup> DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 264, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000]; *also* UNHCR EU REPORT 2000, *supra* note 7, at 154.

<sup>10</sup> *generally* Human Rights Watch, THE OTHER FACE OF THE CANARY ISLANDS: RIGHTS VIOLATIONS AGAINST MIGRANTS AND ASYLUM SEEKERS (2002), *available at* <http://hrw.org/reports/2002/spain> (last accessed Aug. 29, 2002).

<sup>11</sup> UNHCR EU REPORT 2000, *supra* note 7, at 139-140.

<sup>12</sup> *Id.* at 154.

<sup>13</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 267.

to interview these applicants. If the UNHCR disagrees with an inadmissibility decision made by the Minister of the Interior, the asylum applicant may enter Spain and appeal the decision to the High Court (*Audiencia Nacional*). Upon request from the court, removal will be delayed until the decision on admissibility is made. This process allows asylum applicants at the border to be freed from detention.<sup>14</sup>

Human Rights Watch recently criticized Spain's application of its immigration law as arbitrary, often resulting in disparate and discriminatory treatment of certain groups as well as in serious violations of migrants' procedural rights.<sup>15</sup>

For in-country applicants, the procedure for the admissibility of their applications to the full asylum determination process is similar to that described below for border applicants, except for the time limits. The Ministry of Interior has 60 days to review a first decision to deny the application. Following a negative determination by the Ministry, the in-country applicant has 15 days to leave the country or to appeal to the relevant court.<sup>16</sup>

*Is there independent review of the detention decision? Yes.*

Border applicants are initially interviewed by the border police or the Office for Asylum and Refuge in Madrid, and are given an initial decision on the admissibility of their asylum applications within four days following the date of their claim. Where admission of the application is refused and entry not permitted, the applicant may request, within one day, review by the Ministry of the Interior which has two days in which to respond. At this juncture, UNHCR's opinion is also sought. If the Ministry does not respond within four days, or the applicant is allowed to enter the full asylum procedure, the applicant is released from the airport area and allowed into the country. If the Ministry rejects the appeal, the applicant may request review by the National High Court within two months.<sup>17</sup>

Detention of arriving aliens who enter illegally can only be extended (after the initial 72-hour detention) by a court order.<sup>18</sup>

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<sup>14</sup> CEAR Correspondence, *supra* note 4.

<sup>15</sup> *generally* Human Rights Watch, DISCRETION WITHOUT BOUNDS: THE ARBITRARY APPLICATION OF SPANISH IMMIGRATION LAW (2002), *available at* <http://hrw.org/reports/2002/spain2> (last accessed Aug. 29, 2002); Letter to E.U. Heads of State, *supra* note **Error! Bookmark not defined.**

<sup>16</sup> ECRE EUR. STUDY 2001, *supra* note 6, at 258.

<sup>17</sup> *Id.*

<sup>18</sup> Guy S. Goodwin-Gill, Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-penalization, Detention and Protection, §79 (Oct. 2001) (unpublished manuscript, on file with Debevoise & Plimpton) [hereinafter Goodwin-Gill Paper].

The administrative authority (the police) wishing to detain rejected asylum seekers awaiting deportation must obtain judicial authorization of detention within 72 hours.<sup>19</sup> The authority must provide justification for detention while awaiting execution of the deportation order; if the authority cannot prove that detention is necessary for deportation, or that deportation will actually occur, the judge will not authorize the detention.<sup>20</sup> If the detention is authorized, the detainee is held only as long as necessary to execute the deportation order, up to a maximum of 40 days.<sup>21</sup> If the deadline for deportation is not met, the police must release the rejected asylum seeker.<sup>22</sup>

*Are there limits on the period of detention? Yes.*

Border applicants may be held for a maximum of seven days, if an appeal is taken. If no decision is made within four days on an initial application for admission, the detainee must be released and admitted to the normal determination procedure.<sup>23</sup> A court may extend the administrative detention of aliens entering illegally to 40 days.<sup>24</sup>

Aliens detained for illegal stay in Spain who apply for asylum within the detention center are entitled to decisions on the admissibility of their claims within sixty days. If their claims are admitted to normal determination procedures, they are released.<sup>25</sup> Stowaways, unless in need of immediate medical assistance, are required to remain on board their vessel until a decision is made on admissibility.<sup>26</sup>

Aliens awaiting deportation may be detained for a maximum of 40 days.<sup>27</sup>

*Is there periodic review of detention? No.*

While there are the various time-limits on detention described above, there is no periodic review.

*Is there access to government-funded legal aid? Yes.*

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<sup>19</sup> UNHCR EU REPORT 2000, *supra* note 7, at 154.

<sup>20</sup> CEAR Correspondence, *supra* note 4.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> UNHCR EU REPORT 2000, *supra* note 7, at 142.

<sup>24</sup> Goodwin-Gill Paper, *supra* note 18.

<sup>25</sup> UNHCR EU REPORT 2000, *supra* note 7, at 155.

<sup>26</sup> *Id.* at 143.

<sup>27</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 264.

Indigent asylum seekers both at the border and in-country are provided with appointed government-funded legal counsel from the local bar association.<sup>28</sup> However, the quality of legal representation for migrants is generally poor and most of them do not receive legal interpretation services.<sup>29</sup> Provision of this service vary among provinces.<sup>30</sup> While most applicants apply for asylum in-country, officials are less likely to inform these applicants of their right to counsel than those at the border.<sup>31</sup>

*Vulnerable groups:* Unaccompanied minors under age 18 are appointed a legal representative for the duration of the asylum procedure, and are placed under the supervision of the child protection authorities. They may be housed in a special facility for minors. Female asylum seekers are given priority with respect to accommodation at reception centers<sup>32</sup> and may be assisted by female interviewers and interpreters, depending on availability and whether the asylum seeker knows to request such assistance.<sup>33</sup>

Human Rights Watch recently released a report documenting serious abuses of migrant children in Spain, in particular in the cities of Ceuta and Melilla. Among the abuses cited were overcrowding, unsanitary conditions, extortion, theft, physical attacks, and denial of health and education services and other legal rights.<sup>34</sup> The autonomous government of Melilla has denied the allegations in the report. In May it decided to refuse to accept unaccompanied migrant children.<sup>35</sup>

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<sup>28</sup> *Id.* at 262; UNHCR EU REPORT 2000, *supra* note 7, at 148.

<sup>29</sup> USCR WORLD REFUGEE SURVEY 2002, *supra* note **Error! Bookmark not defined.**, at 200.

<sup>30</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 263.

<sup>31</sup> ECRE EUR. STUDY 2001, *supra* note 6, at 260-261.

<sup>32</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 269.

<sup>33</sup> UNHCR EU REPORT 2000, *supra* note 7, at 154.

<sup>34</sup> Human Rights Watch, SPAIN AND MOROCCO: NOWHERE TO TURN: STATE ABUSES OF UNACCOMPANIED MIGRANT CHILDREN BY SPAIN AND MOROCCO (2002), *available at* <http://hrw.org/reports/2002/spain-morocco> (last accessed Aug. 29, 2002).

<sup>35</sup> Tito Drago, Inter Press Service, *Rights-Spain: Enclave to Expel Unaccompanied Child Immigrants* (May 7, 2002), *available at* <http://www.lexis.com>.