

COMPARATIVE REPORT ON THE FUNDAMENTAL RIGHTS SITUATION OF
IMMIGRANTS IN THE EU MEMBER STATES: ITALY, GREECE, FRANCE AND
SPAIN

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**JEAN MONNET CENTRE OF EXCELLENCE ON MIGRANTS' RIGHTS
IN THE MEDITERRANEAN**

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INTRODUCTION

The comparative report on the fundamental rights situation of migrants in the EU Member States selected (Italy, Greece, France and Spain) is based on desk research and on a comprehensive survey of existing research, data, legal and policy analysis.

The research has been conducted by early stage researchers (PhD candidates): Antonio Giattini, Mario Ventrone, Lorenzo Riccio, Giuliana Doria; under the direction of Prof. Giuseppe Cataldi and the supervision of researchers and fellow researchers Dr Michele Corleto (section: border control), Dr Adele Del Guercio (section: respect of migrants' rights), Dr Marco Fasciglione (section: access to work), Dr Marianna Pace (section: Access to education).

The methodological approach to the research, carried out in order to develop the country reports, was conducted taking into account the evolution of domestic legislation in the 4 Countries selected for this work, analyzing the most relevant case law and collected documents on access to justice, legal and social services (education and work), border control and respect of migrants' rights.

In particular, great attention was paid to the most recent and important innovations in the legislative procedure, which greatly affected access to countries and the condition of asylum seekers.

The research has been implemented by referring to the Official Gazette of each State in order to find the most recent legislation on the issue and including national legislation on the reception of European Law in the field.

Through access to the web sites selected and other official government sources (see the websites list and bibliography section of the report below) the work analyzed several practical cases and decisions of the national Courts and other jurisdictional and administrative entities (e.g. Council State, local authorities, etc...). Moreover, the work analyzed the impact of the most relevant European judgments on the national policymaking process in the field of asylum and migrants' protection.

Finally, the methodology adopted was defined through the elaboration of national and regional data by using qualitative and quantitative tools and the study of most relevant reports and papers published by International Organizations, European entities, NGOs and EU and domestic Research Centres.

Prof. Giuseppe Cataldi

**JEAN MONNET CENTRE OF EXCELLENCE ON MIGRANTS' RIGHTS
IN THE MEDITERRANEAN**

COUNTRY REPORT

COUNTRY: Italy

YEARS: 2014-2017

INTRODUCTION – OVERVIEW OF THE COUNTRY

Immigration flows to Italy increased and continued despite the profound economic crisis the country suffered in 2008.

According to official reports of 2013 immigrants now represent 7.4% of the entire population of the country. Italy has been on the front lines of the migration crisis, as demonstrated by the fact that in the past three years thousands of asylum seekers continued to reach the its coastline every month.

Just since the start of this year nearly 119,000, (the majority being asylum seekers) have arrived in Italy.

Because of this mass influx immigration is still considered a great problem and an emergency: the idea that “we cannot cope with this burden alone” is dominant in the political discourse and political and public attention is often focussed on irregular migration. A well-structured integration policy has yet to be formulated.

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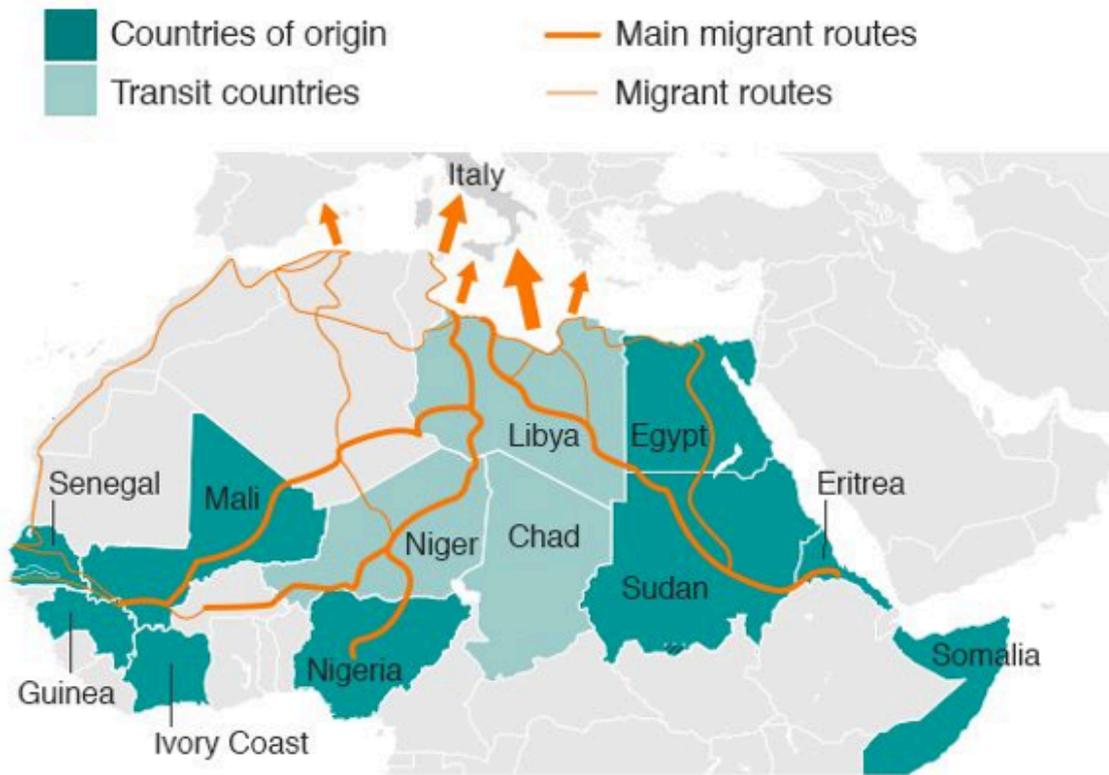
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Central Mediterranean migrant routes



Central Mediterranean migrant routes. Source: Unicef

SECTION 1 – ACCESS TO JUSTICE

According to the Procedure Decree asylum seekers may appeal decisions taken by the Territorial Commissions before the competent Tribunal, which are competent in rejecting the application for refugee status or subsidiary protection or a request for a residence permit on humanitarian grounds. Asylum seekers, according to Article 16 of the Procedure Decree, confirmed by LD 142/2015 (1), may benefit from free legal assistance and representation during the appeal, but not before the administrative procedure before the territorial commission.

The possibility to appeal the First Instance Tribunal decision on international protection before the Court of Appeal was abolished by Decree - Law n. 13/2017 (2), published on 17 February 2017, converted into Law n. 46/2017.

Following approval of the new law, an asylum seeker may appeal the First Instance Tribunal decision only before the Court of Cassation, within 30 days (no longer within 60 days).

Moreover, the new law states that only specialized court sections in Italy will deal with asylum appeals and that the suspensive effect is not automatic in some cases.

The First Instance Tribunal is not obliged to hear the applicant, but can take decisions on the basis of a draft written during the first hearing or the video recording of the hearing.

The judge is obliged to hear the asylum seeker only in specific cases (provided for by law n. 46/2017), such as when it is not possible to record the hearing (which could occur frequently as many courts in Italy are not yet ready for the new procedure).

The reform was highly criticized by NGOs and some judges.

With regard to the appeal phase before the first Instance Tribunal, free legal aid (“*gratuito patrocinio a spese dello stato*”) is provided by law.

However, there are some restrictions regarding the enjoyment of this right because, according to DPR 115/2002 (3), only those applicants who can prove they have a yearly taxable income lower than €11.369,24 may benefit from free legal aid. In order to be admitted to free legal assistance, the applicants can present a self-declaration of their yearly taxable income, as clarified by Article 8 PD 21/2015, instead of the documents prescribed by Article 79 DPR 115/2002.

Some Bar Councils, such as the Bar Council of Genova in 2015, were still refusing free legal aid to asylum seekers who did not provide consular certifications of their income.

Due to contrasting rulings regarding competence between civil courts and administrative courts, at the moment asylum seekers notified of a Dublin decision lack a clear remedy against the transfer.

SECTION 2 - SOCIAL SERVICES FOR MIGRANTS (EDUCATION AND WORK)

Asylum seekers who obtain a residence permit are entitled to apply for employment (public employment is included). The only limitation according to the law is that they cannot hold positions involving the exercise of public authority or safeguarding the general interests of the State.

The same treatment granted to Italian citizens is granted to beneficiaries of international protection, including registration with professional bodies and enrolment in professional training courses.

According to the Constitution all minors in Italy have the right to education, whatever their legal status; they must be enrolled in Italian schools (which can be done any time of the year) under the same conditions as Italian minors and are subject to compulsory education.

It's important to distinguish between minors under the age of 16 and over the age of 16:

Compulsory education applies only to minors under the age of 16, who must be enrolled in the grade corresponding to their age. However, the Teachers Board can decide, according to the curriculum of the minor and his/her skills, assignment to a class immediately below or above the regular one.

Minors can be enrolled in the class they prefer, if they are not subject to compulsory education and can provide proof of proper self-preparation.

It's not possible, according to the Circular of the Ministry of Education of 8 January 2010 (5) and current legislation, to create special classes for foreign students and it has been determined that non-national minors should be limited to 30% for each class.

It is not mandatory for schools to provide specific language support for non-Italians student, but the Teachers Boards can provide for special assistance to help non-Italian minors learn the Italian language. In guidelines issued in February 2014(6), the Ministry of Education emphasized that special attention should be paid to language labs, in order to adapt curricula to foreign students. It has been demonstrated that in order to be effective this type of intervention requires about 8-10 hours per week of Italian language lab activity for approximately 3-4 months.

According to the Qualification Decree, minors holding refugee status or subsidiary protection status should be able to access to all the educational levels, using the same procedures as Italian students and citizens.

It is also possible for beneficiaries of international protection to be recognised an educational equivalency degree.

SECTION 3 – BORDER CONTROL AND VIOLATION OF HUMAN RIGHTS

New rules for the protection of migrants have been introduced by Law 47/2017, titled “Provisions on protection measures for unaccompanied minors”, which came into effect on May 6, 2017. This law applies to “unaccompanied minors” who are defined as a minor, not Italian or EU citizen, who is in the territory of the State or who is otherwise subject to Italian jurisdiction, who is not assisted and represented by parents or other legally responsible adults, according to the Italian laws in force. According to this law unaccompanied minors cannot be expelled at the borders and must always be issued a residence permit, as provided for by Legislative Decree 286/1998 (Article 19). Law 47/2017 combines the existing provisions into a single text.

The main problems affecting unaccompanied minors are the delays in the appointment of a legal guardian, the high number of unaccompanied minors assisted by the same legal guardian and the age assessment procedure, not always respectful of human dignity. The new law provides for the figure of the voluntary guardian to streamline the procedure and ensure that each guardian follows only one child and the rules on age assessment more stringently.

With the modification of Legislative Decree 286/1998 and this new introduction, when the expulsion of a foreign minor is to be arranged on the basis of Legislative Decree 286/1998, the measure may be taken by the juvenile court, in case of threat to national security “provided however that the measure itself does not pose a risk of serious harm to the child”.

2005 CNDA Guidelines established that, if the asylum seekers are in serious difficulties during the interview, the Territorial Commissions should contact specialized services, in order to help the asylum seekers and to obtain useful information concerning their health and elements of the claim. It’s still necessary to provide *ad hoc* procedures and Guidelines focusing on the interviews of vulnerable groups (children, traumatized persons, survivors of torture and violence) as well as skilled personnel competent to deal with these cases.

Unfortunately migrants are still being frequently classified solely on the basis of their nationality. Migrants from Nigeria, Gambia, Senegal, Morocco, Algeria and Tunisia are too easily and quickly classified as economic migrants.

Moreover, people arriving to Italy tend to reach other countries to lodge their asylum application without even registering in Italy, to avoid being returned to Italy under the Dublin III Regulation. For this reason frequent use of force to fingerprint migrants has been reported.

The Standard Operating Procedures (SOPs) adopted in February 2016 and applying to Hotspots, have tried to regulate the procedure stating that “where necessary the use of force proportionate to overcoming objection with full respect for the physical integrity and dignity of the person is appropriate [...]”. According to this, the repeated refusal to undergo fingerprinting constitutes a risk of escape and legitimizes detention in CIE.

Many problems are still being reported (ASGI in 2016): migrants coming to Italy from the Eastern Border have experienced lack of accommodations and obstacles in accessing asylum procedures. For example, on December 19, 2015, an emergency reception centre was opened in Gorizia for 70 asylum seekers; the project was closed in June 2016, after assisting more than 598 asylum seekers excluded from other accommodation systems. As reported, people also faced obstacles in accessing the procedure in Udine, and had to take shelter in train and subway stations.

In Pordenone, asylum seekers wandered for days around the city, sleeping in the city park, while waiting for a location to be assigned to them. While, in Trieste, the Prefecture opened new shelters (CAS), and migrants had to spend several days in the abandoned buildings near the train station.

FINAL REMARKS

Italy is traditionally a host country for migrants. But there are still problems, given the lack of accommodations and support to migrants. Waiting times for applications to be processed are very long and this makes Italy less attractive, even though, because of its geographical position in the Mediterranean, it is still a central point of arrival for asylum seekers. Italy must greatly improve its receptive measures.

Asylum rejections have similarly increased in the past, and there has been a 62% increase in asylum requests up to March 2016.

Measures to improve the condition of unaccompanied minors were approved in March 2017, providing for extended health care. With these reforms Italy is attempting to protect the increasing number of children and teenagers entering Italy.

To accelerate the procedure for recognition of international protection and to counteract irregular migration new legislation has been adopted.

On the other hand, many problems still exist: overcrowding of reception centres, long waiting times for the assessment of asylum requests and lack of legal assistance.

The general public still has a generally negative opinion regarding the increased immigration flows and this has inspired the security approach of recent legislation.

Time is needed to better evaluate the effects of the new rules but it can already be said that these programmes need better connections with local welfare services, and improved collaboration and cooperation between institutions.

Many proposals have been made to improve the situation, such as the creation of humanitarian corridors, opening of legal entry for migrant for work purposes, the repeal of the crime of illegal migration and new criteria of citizenship.

**JEAN MONNET CENTRE OF EXCELLENCE ON MIGRANTS' RIGHTS
IN THE MEDITERRANEAN**

COUNTRY REPORT

COUNTRY: Greece

YEARS: 2014-2017

INTRODUCTION – OVERVIEW OF THE COUNTRY

During the period extending from 2014-2017, Greece faced two important migration crises: irregular migration and asylum seekers, as Greece remains a main point of arrival and entry into the EU for migrants and asylum seekers from Asia and Africa; an internal migration crisis caused by the significant level of unemployment among migrant workers who have settled in the country, and the inability to renew their sojourner's permits.

These internal and external migration challenges, coupled with the strong economic and political crisis, has led to a particularly delicate situation: fast rising xenophobic violence and racism, plus the revival of a defensive nationalism that is both anti-European and anti-immigrant.

Both the European, with Germany leading the group, and non-European migrants became suitable targets, offering easy explanations to complicated structural problems that affected the country in this period.

This vulnerable and explosive political/financial situation is matched by an increasingly unstable geopolitical environment in the region.

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Refugee and migrant children in Greece

As of 31 March 2017

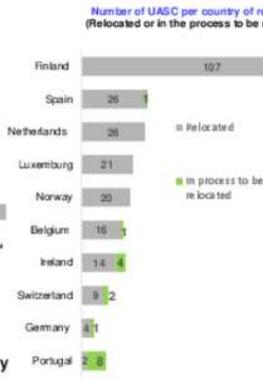
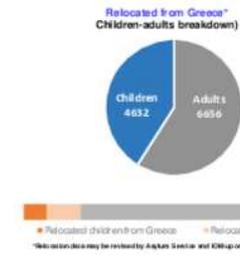


Key figures

20,300 estimated number of refugee and migrant children across Greece. Among them 2,000 UAC

4,632 children have been relocated from Greece, as of end of March. Among them 245 UASC (4 November 2015 – 31 March 2017)

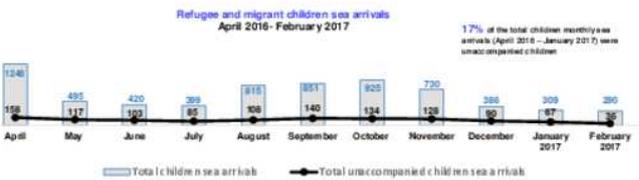
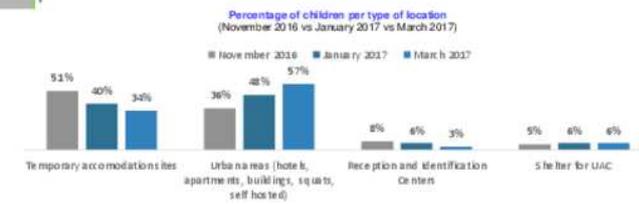
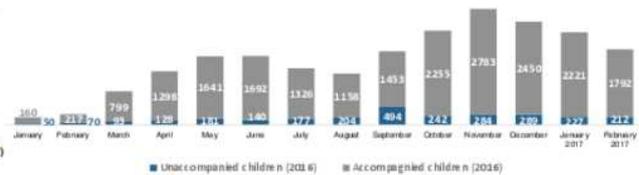
59 accompanied children have been returned to Turkey through the EU-Turkey statement (20 March 2016 - 31 March 2017)



2,500 children attending formal education afternoon reception classes in schools from temporary accommodation sites (Source: Ministry of Education)

Secondary analysis of data by the following sources: RIG, MoMP, Hellenic Police, EKKA, UNICEF, IOM, UNHCR, Greek Asylum Service

Asylum applications January 2016 - February 2017 (accompanied and unaccompanied children)



UNICEF Refugee and Migrant Children in Greece as of 31 March 2017

SECTION 1 - ACCESS TO JUSTICE

Taking the case ECtHR - M.S.S. v Belgium and Greece [GC], Application No. 30696/09 (1) decided in 2011, as a starting point of this analysis, the Court specified that, in relation to the Procedure of that time, there were: “Major shortcomings in access to the asylum procedure and in the examination of applications for asylum: insufficient information about the procedures, difficult access to Attica Police Headquarters, no reliable communication system, shortage of interpreters, lack of training, lack of legal aid, excessively lengthy delays in receiving a decision.”

Because of these problems, a new procedure was established for applications lodged after 7 June 2013.

Under the new procedure, and depending on the legal jurisdiction, applications for international protection are received and registered by the Regional Asylum Offices (RAOs) and Asylum Units (AUs).

A positive step in reforming the Asylum system in Greece is also represented by the new Asylum Service established on 7 June 2013. This service allows for registration, examination and first-instance decision-making on asylum applications by a state body, that is by civil servants rather than by the police.

Article 1(3) L 3907/2011 (2) provided for 13 RAOs in Attica, Thessaloniki, Alexandroupolis, Orestiada, Ioannina, Volos, Patras, Heraklion, Lesvos, Chios, Samos, Leros and Rhodes.

But despite the new legislation access to the asylum procedure is still not guaranteed in practice.

Serious delays in the registration and processing of applications for international protection are,

caused by staff shortages in the Asylum Service and the non-operation of all RAOs. There is no law containing provisions regarding free legal assistance in the fast-track border procedure. The General provision on legal assistance is, on the other hand, applicable, but in practice no state-funded organized free legal assistance is provided either for first or second instance procedures.

NGOs are the only organizations that provide legal assistance, according to their capacity and areas of operation.

Metadrasi is implementing a UNCHR-funded program to provide free legal assistance, at least during the appeal procedure for appellants who remains on the islands and who come under the EU-Turkey statement, with the fast - track border procedure.

SECTION 2 - SOCIAL SERVICES FOR MIGRANTS (EDUCATION AND WORK)

According to national legislation amended in 2016, asylum seekers must have access to the labour market as employees or work providers upon applying for asylum and obtaining the asylum seeker's card.

In practice, considering the actual scenario of the financial crisis, high unemployment rates and the obstacles posed by competition with Greek-speaking workers, it's very complicated for asylum seekers to truly access the labour market, which usually leads to undeclared work with repercussions on social rights

Statistics demonstrate that the unemployment rate of third-country nationals is greater than the Greek one, while the percentage of the economically active population of third-country nationals is significantly higher than in Greece.

Minor children of applicants and children seeking international protection must have access to the education system as granted to Greek nationals, if there is no mandatory removal measure against them or their family, as established by Article 9 PD 220/2007 (3). Secondary, education also cannot be neglected for the reason that the minor has reached the age of maturity.

Remedial classes are provided for all school-age children ages 4 to 15 by a Ministerial Decision published in August 2016 (ΤΤάξη Υποδοχής). This program applies to public schools that located near camps or places of residence for migrants. Moreover, children aged 6-15 years, living in temporary facilities, have to be enrolled in afternoon preparatory labs from 14:00 to 18:00 in nearby public schools identified by the Ministry of Education, where they are taught Greek as a second language, plus English, mathematics, sports, arts and computer science. Transport is, at the present time, organized by the International Organisation for Migration (IOM).

Security problems for children accessing schools are reported in some areas, due to tension provoked by far - right groups. This has happened in the Schisto camp due to the strong presence of the far - right party Golden Dawn in Perama.

To counter this phenomenon IOM has established security procedures for the bus drivers on what to do if there is a security risk for the children they are transporting.

In Oreokastro, near Thessaloniki, far-right groups demonstrated outside the building of the primary school on 17 February 2017, when 15 refugee children were about to start school.

On the other hand, there are also schools that have set up programs to welcome refugee children.

The implementation rate of the refugee education program is very slow, with significant gaps remaining in the provision of pre-school education, secondary (over the age of 15), higher education and work training.

Moreover, it is not easy for the education sector to meet the needs of children who have missed years of schooling due to conflicts or displacement and who require faster and better programs of study.

To provide help to the state, more than 80% of the accommodation sites are hosting informal education activities, in addition to those managed by the state.

SECTION 3 – BORDER CONTROL AND VIOLATION OF HUMAN RIGHTS

Newly-arrived migrants who arrived in Greece between 2015 and the beginning of 2016 preferred other EU Member States, due to bad reception conditions provided and the extremely limited integration prospects.

A pre-registration procedure (implemented with the help of UNHCR and EASO) was launched on the mainland, as a test from 8 June to 30 July 2016, by the Asylum Service, to offer third country nationals the possibility of applying for asylum and to cover the increasing demand for access to international protection.

“Pre-registration” is a “basic registration” of asylum seekers’ details making use of the possibility foreseen in Article 36 (1)(b) L 4375/2016 (4).

The EU-Turkey Statement had an important impact on the detention of asylum seekers, toughening the detention policy with the establishment of detention of all newly arrived after 20 March 2016. After March 2016, all newly arrived third-country nationals expressed the will to apply for asylum, contrary to what was happening before the Statement was approved.

Detention provisions have been partially transposed by L 4375/2016, but the Recast Reception Conditions Directive has not been transposed into national law yet.

The 2015 Annual Report of the Racist Violence Recording Network (6), published in April 2016, states that “recordings of attacks against refugees and immigrants have risen. A significant number of victims suffered injuries, which demonstrates the contrast – but also the coexistence within the same society – between the solidarity that a substantial part of the population expresses towards refugees and the violent behaviour of another part of the population.”

Due to the implementation of the EU-Turkey statement thousands of persons are blocked on the Eastern Aegean islands and this has intensified tension and fuelled intolerance among local communities, exposing them to the influence of increasingly racist rhetoric throughout Europe.

Due to the structural insufficiencies of the reception system on the mainland and islands like Lesbos and Chios, the same scenario exists all over Greece.

Lesbos was in the forefront of the human drama in 2015, and the main camp at Moria is currently holding twice its capacity with 4,825 people registered (according to the UNHCR the centre is equipped to house no more than 1,800).

FINAL REMARKS

Greece, along with Italy, has been on the frontline of a wave of people seeking safety and a better future in Europe.

The conditions of reception centres, however, still do not respect standards, and the situation risks becoming increasingly worse in winter time. Moreover, in Greek hotspots, there is alarm relating to proper assessment of vulnerabilities.

*JEAN MONNET CENTRE OF EXCELLENCE ON MIGRANTS' RIGHTS
IN THE MEDITERRANEAN*

COUNTRY REPORT

COUNTRY: France

YEARS: 2014-2017

INTRODUCTION – OVERVIEW OF THE COUNTRY

Since the 19th century, French society has been greatly affected by immigration. France's foreign-born population is comparable to that of other European countries and yet there is a remarkable difference: immigrants arrived earlier in France, and their flows have recently diminished compared to those of other destination countries. Accordingly, France presents one of the largest community of immigrant descendants in Europe.

France has the largest immigrant population in Europe after the United Kingdom, Germany and Italy. In 2014, it had 5.7 million foreign-born residents — around 8.7% of the total population — of whom 4.1 million were foreign citizens. About one-third came from the European Union, 43% from Africa and 14% from Asia. The immigrant population is considerably older in France than elsewhere in Europe, as a result of very limited migration from the 1970s to the 2000s. Immigration flows have again increased since 2000. New arrivals hail from increasingly diverse countries, have higher levels of education, and are more likely to come for work. Yet family reunification remains the main route of entry: of the 217.533 arrivals in 2015, about 90.000 arrived through family channels, 70.000 as students, 20.000 for work, and 22.000 for humanitarian reasons.

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SECTION 1 – ACCESS TO JUSTICE

The French Ombudsman (*Défenseur des droits*) has recently found that the effective access to justice for migrants is hampered by certain specific obstacles, both in terms of access to the judge and of effectiveness of the remedies.

In fact, since 1991, French laws on legal aid ensure the right of access to justice, providing that people whose resources are below a certain ceiling have the right to legal aid and to free assistance of a lawyer to assert their rights in court. Applications for judicial aid are heard by Legal Aid Offices established at each court of first instance, whose decisions are in principle subject to appeal. However, in the vast majority of cases, some difficulties have been documented in relation to the assessment made by the Offices. The requests, indeed, were sometimes excessive in consideration of the migrants' personal situation, or even in violation of the regulations in force. To this end, in 2015, the Ministry of Justice reminded the courts that the production of documents that could not reasonably be produced in light of the applicant's stated or manifest situation, cannot be required to assess the economic situation of the migrant.

Since 2013, the right to an interpreter is expressly guaranteed by the Criminal Code, which defines it as a general principle of the right to a fair trial. Beyond criminal matters, domestic French legislation expressly protects the right to an interpreter for any alien subject to a custodial measure. Yet, in some cases law enforcement officials have asked for an interpreter who was not

an expert of the specific foreign language and they have too broadly interpreted the ability of the migrants to understand French.

The conditions for the reception of migrants and the processing of requests for residence permits by the prefectures are the subject of much criticism by civil society, by the Commissioner for Human Rights of the Council of Europe and by the French Court of Auditors (*Cour des comptes*), which in its 2013 public report deplored the existence of long queues in front of the prefectures by applicants for residence permits and the resulting tensions. Access to the procedures is even more difficult for detained migrants, who encounter great difficulties in taking the necessary steps for the issue or renewal of their residence permit while detained. This situation leads many detainees to be in an irregular status at the time of their release from prison, and thus to be held in administrative detention.

In addition, decisions concerning the refusal of the issue or of the renewal of residence permits are accompanied by very short time limits for the appeal, which make difficult to apply for a judicial review. This is the case of the order to leave the territory “without delay”, by which the Prefect refuses the issuance or renewal of a residence permit, decides to remove the applicant from French territory and identifies the country of destination to which he/she will be sent. The person concerned has then only 48 hours to challenge all aspects of this decision, even though he/she may be detained as soon as the order is notified. The detained migrants find themselves, once again, in a particularly delicate situation, since they do not always have the possibility of soliciting legal assistance in time.

Migrants held in administrative detention centres are informed of the reasons for their placement in these centres through notification of the administrative decision. The notification must state clearly the legal ground that serves as a basis for the detention and why the removal cannot be implemented immediately. This document also mentions the legal remedies available to challenge this decision. Migrants also receive a notification of all their rights, including the right to apply for asylum and the right to linguistic and legal support in submitting their claims. According to the law, this notification should be made (orally) to the migrant in a language he/she understands. In practice, this is done in most of the cases but not always. Detainees are also notified that their asylum claim will be inadmissible if it is submitted 5 days after their rights have been notified.

Legal assistance for persons held in administrative detention (including asylum seekers) is provided by law. Currently, five NGOs which assist foreigners are authorised to provide legal advice in the Administrative Detention Centres. They inform the detainees and help them to exercise their rights during the detention procedure (hearings in front of the judge, filing of an appeal, request for legal aid etc.).

French law provides a judicial review of the lawfulness of the administrative detention for all migrants. The legality of detention falls under the dual control of the administrative court and the civil court. Each court examines specific and complementary aspects of the procedures. However, the Law of 7 March 2016 on the Rights of Foreigners in France, which came into force on 1 November 2016, introduces several changes to the legal regime for foreigners and profoundly transforms the law and procedures applicable to the refusal of residence permits and the removal of illegal immigrants from French territory, whether they come from third countries or from the European Union. The law modifies the division of competences between the administrative and the civil judge. In fact, the decision to detain aliens is transferred to the *juge des libertés et de la détention*, the only judge before whom this decision can be contested. A dispute of an administrative nature is thus transferred to the ordinary judge, who now has to deal with all aspects of the administrative detention of migrants. The objective is to create a judicial jurisdiction over the circumstances in which a migrant has been deprived of his liberty, from the arrest to the detention, including the review of its legality. According to French authorities, this transfer should ensure the right to an effective remedy guaranteed by Article 5.4 of the European Convention of Human Rights.

SECTION 2 - SOCIAL SERVICES FOR MIGRANTS (EDUCATION AND WORK)

In 2014, 1.7 million migrants participated in the labour market in mainland France, equivalent to 5.9% of the active population. Immigrants are more likely to be active than natives – although immigrant women’s activity rate is lower for some groups (e.g. North African) – but they have higher unemployment rates – 19% in 2014, 10 percentage points higher than natives. These gaps are greater for immigrants with university degrees (twice as likely to be unemployed as natives with the same educational level).

These poor employment outcomes have been linked to a number of socioeconomic factors, including lower educational levels, difficulties in getting foreign skills and experience recognized, limited language proficiency, a labour market that is not open to foreign-language speakers, poor social networks and discrimination by employers. Moreover, immigrants and ethnic minorities are more likely to live in disadvantaged urban areas, where jobs suited to their skills are rare. Formal barriers to obtaining work also play a substantial role in France. About one-fifth of the French labour market is off-limits to migrants from outside the European Union because of nationality requirements. And whether they already live in France or not, foreign workers need a work permit issued by the local employment services, which are required to check that the principle of “national preference” is respected.

As far as asylum seekers are concerned, access to the labour market is allowed only if the French Office for the Protection of Refugees and Stateless Persons has not ruled on the asylum application within 9 months after the registration of the application, and only if this delay cannot be attributed to the applicant. In this case, the asylum seeker is subject to the rules of law applicable to third-country national workers for the issuance of a temporary work permit.

Prior to being able to work, the applicant must have sought and obtained a temporary work permit, which is subjected to a job offer or an employment contract. The duration of the work permit cannot exceed the duration of the residence permit linked to the asylum application, but it may be renewed. From the moment they are granted asylum, beneficiaries of international protection are allowed to access the labour market under the same conditions as French nationals, whether they are refugees or beneficiaries of subsidiary protection.

The organisations running the temporary accommodation centres (*Centre provisoire d’hébergement*) are funded to support beneficiaries in determining their professional path and facilitating their integration in the labour market. To do so, they implement partnerships with relevant stakeholders, including the French national employment agency (*Pôle emploi*), local charities and NGOs. In practice, it is more difficult for migrants to find a job. The first obstacle is obviously linked to the language. Even if the law commits the State to provide French classes, it is rarely sufficient for beneficiaries to get a job. They could turn to their native community, but this tends to complicate their integration. In the countryside, they also have difficulties regarding remoteness of location. Finally, refugees and beneficiaries of international protection suffer from a lack of recognition of their national diplomas. This implies that highly skilled beneficiaries are often forced to accept unqualified jobs, mostly without any link to their previous occupation in their country of origin.

Even though no provision of the Education Code covers the particular case of migrant children, French law provides that they are subject to compulsory education as long as they are between 6 and 16 years old, according to the same conditions as any other child. Primary school enrolment can be done at the local town hall, while registration for the secondary school is made directly with the institution closest to the child’s place of residence. If the children seem to have a sufficient command of the French language, the evaluation process will be supervised by a Counselling and Information Centre (*Centres d’information et d’orientation*), a public structure dedicated to the educational guidance of all students.

Specific integration programmes are designed for children of newly arrived migrants who need to learn the French language. Initiation classes (*classes d’initiation*) serve newly arrived migrant

children in primary school, while reception classes (*classes d'accueil*) serve children in secondary or high school. A reception unit (*cellule d'accueil*) – located in a *département* or regional education headquarters – assesses new arrivals' French language ability and educational levels, and if necessary, sends them to initiation or reception classes. Such classes, funded by the Ministry of Education, are based in selected schools located in areas with concentrated immigrant populations. These schemes are temporary (children spend one year in these classes) and are intended to help pupils join mainstream classes as soon as possible. Other than language classes, the French Ministry of Education does not run any programme addressing issues specific to pupils with an immigrant background.

Barriers to an effective access to education are varied. Apart from the generally poor level of language shown by migrants, specialised language classes are scarce – especially in the rural areas – and the resources dedicated to these schemes are limited. The requirement of an address as a condition for the enrolment of children can also represent a serious obstacle for migrants without residence. In addition, public schools do not have any obligation to accept children aged 16 to 18 and the possibility to attend French courses offered by charities varies across the country. As work permits are usually not granted to asylum seekers, they cannot have access to apprenticeship.

Finally, asylum seeking children with special needs face even greater difficulties. Access to trained and specialised staff (*auxiliaires de vie scolaire*) tasked with supporting these children during their education in regular schools is very limited.

According to a March 2014 report from the National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme*), access to education remains a concern for unaccompanied children, especially those who are not taken in charge by the competent public service and must care for themselves. According to the Council of Europe and UNHCR, unaccompanied children arriving after the age of 16 are only given access to education if there are places available. Some arrive without ever having been to school, so they often cannot read or write. In this case it is extremely difficult to integrate them into the mainstream education system. There is no access to free language classes but sometimes social workers in the facilities manage to make appropriate arrangements on an ad-hoc basis.

While the Ministry of Education focuses more on curriculum development and the functioning of schools, the General Commission for territorial equality (*Commissariat général à l'égalité des territoires*) offers extra help to pupils outside school, seeks to reduce social inequality and targets specific disadvantaged areas (*zones urbaines sensibles*) in the form of Educational Achievement Programmes (*Programmes de réussite éducative*).

SECTION 3 – BORDER CONTROL AND VIOLATION OF HUMAN RIGHTS

France re-established controls at its borders on 13 November 2015. Originally introduced to accompany COP 21 as part of preventive security measures, the temporary restoration of controls at the Franco-Italian border – justified for “serious threat to public order or internal security” on the basis of article 25 of the Schengen Borders Code – was subsequently extended on 9 December 2015 in the wake of the Paris terrorist attacks of 13 November 2015, due to a high terrorist threat and the need to combat cross-border crime in this context. On the same date, France implemented a state of emergency, which has been periodically renewed and is still in force. Although a distinction must be made between “state of emergency” and “restoration of border controls”, both mechanisms being independent and not falling under the same legal regime, the French government has frequently connected them on the basis of a supposed close link between the migration routes and the passage of terrorists at the borders of the Schengen area.

While the laws relating to the state of emergency do not directly concern the right of aliens, they have had a significant impact on the matter, in particular on the legal regime applicable to

detention centres for migrants. Thus, a state of emergency could be invoked indirectly to justify and validate certain practices which, in normal circumstances, would have resulted in the release of migrants placed in administrative detention centres. For example, some court decisions considered that an extension of administrative detention may be justified by a state of emergency. Additionally, the Law on the State of Emergency allows the Prefect to establish “protection zones” having a regulated access. This system has been repeatedly used to prohibit access to certain areas of Calais or, more recently, to dismantle the “Jungle”.

In view of the re-established control at the French borders, following the establishment and then the extension of the state of emergency, authorities are allowed to carry out systematic checks at several approved crossing points. On the border between France and Italy on-the-spot checks put in place by the French authorities prevent or dissuade people from entering France without any real consideration given to their rights and to legal safeguard procedures. In most cases, people checked at the border are deprived of any possibility of asserting their rights, including the right to seek asylum. Unaccompanied children are not given the attention required by their situation of vulnerability, as imposed by French legislation on the protection of migrant children. Refugees or migrants find themselves blocked at the border, in conditions of manifest deprivation, without access to accommodations, water, food or basic hygiene. Expulsions to Italy are often carried out without formalities, contrary to French law.

In fact, all along the French borders, a decision of refusal of entry must be notified to each person, in accordance with the Code on the entry and residence of foreigners and the right of asylum, which also grants migrants some minimal rights: a written and motivated decision notified in a language that he/she understands; the possibility of having access to a telephone; of not being returned immediately; the right to apply for asylum; to have his application examined and to be informed on the procedure in a language he/she understands; the right to appeal in case of negative decision.

However, the procedure that is actually applied has many failings, when it is not simply ignored. A large number of persons have been returned to Italy without having been notified in writing in a language they can understand (the most represented nationalities on the Franco-Italian border are Sudanese, Eritrean and Afghan, who do not speak French). In most cases, intercepted persons are subject to systematic measures of removal, without their actual situation being investigated. No real verification is carried out by the police, the aim being to return irregular migrants to Italy as rapidly as possible.

The fact that these people come from Italy does not excuse France from not registering and examining their asylum application. Indeed, under French and European law it is only once the asylum application has been registered that the question of determining the responsible Member State arises. Thus, the mere fact that migrants come from Italy is not sufficient to assume that this State is in fact the State responsible for examining their application.

These human rights violations committed by the French authorities have led citizens to mobilise in order to help refugees and migrants. Some, however, have been charged by the state.

Turning to the North of France, until the end of October 2016, a shantytown on the edge of Calais, known as “the Jungle”, held in absolute deprivation between 6.000 and 10.000 refugees, asylum seekers and migrants, including many unaccompanied children, whose desire was to reach the United Kingdom. Human Rights Watch documented police abuses of asylum seekers and migrants, their disruption of humanitarian assistance and the harassment of aid workers. Police in Calais, particularly the riot police (*Compagnies républicaines de sécurité*), has been reported to have routinely used pepper spray on child and adult migrants while they were sleeping or in other circumstances in which they posed no threat; to have regularly sprayed or confiscated sleeping bags, blankets, and clothing; and sometimes to have used pepper spray on migrants’ food and water. Police also disrupted the delivery of humanitarian assistance. This had a severe impact on access to services for children and the migrants’ ability to apply for asylum.

Such police conduct in and around Calais is an abuse of power, violating the prohibition on inhuman and degrading treatment or punishment and is an unjustifiable interference with the migrants' rights to food and water.

In October 2016, the camp was eventually demolished and its residents relocated to emergency shelters across France. However, one year after the clearance of "the Jungle", hundreds of migrants still seem to be abandoned in the area of Calais and the surroundings of the English Channel. Most of them are unaccompanied minors lacking basic needs, like food, clothing and a safe refuge. Despite the fact that they could have a right to family reunification in the United Kingdom and more than 750 unaccompanied minors have been transferred from France to the UK since 2016, many others, largely from sub-Saharan Africa – Eritrea, Sudan, Ethiopia – as well as Afghanistan and Iraq, were not eligible for the special scheme provided by the "Dubs amendments" to the English Immigration Act. According to several NGOs operating on the ground, these children are suffering from police harassment and face racial and xenophobic discrimination.

FINAL REMARKS

France is traditionally a host country for migrants. Just a few years ago, it had some of the highest number of asylum claims in Europe, but its lack of accommodation and support for asylum seekers, as well as long waiting times for applications to be processed, have made it a less attractive option for many refugees. For these reasons, most refugees now avoid France, especially Syrians who can be fairly sure of getting refugee status in Germany or Sweden much more quickly.

Furthermore, in recent years there has been a legislative inflation, with nearly a dozen laws adopted since 2002, most of which go in the direction of tightening the rules applicable to asylum seekers and migrants. The implementation of these laws raises serious questions of compatibility with France's international commitments on human rights, whether they are general treaties such as the European Convention on Human Rights or the International Covenant on Civil and Political Rights, or instruments specifically dedicated to refugees, such as the 1951 Geneva Convention.

Normative activism is much weaker in terms of integration. The creation in 2012 of a Ministry of Immigration, Integration and National Identity brought the integration policies and the fight against irregular immigration within the same ministry. The fears expressed by the NGOs, in particular, that a securitarian approach to migration in France could prevail – especially in a context of state of emergency due to the terrorist threat – were not eliminated when the ministry ceased to exist and its competences were transferred to the Ministry of the Interior.

Among the major issues that raise concerns are the reception of asylum seekers, the protection of the human rights of unaccompanied foreign minors, as well as the quality of proceedings and the effective remedies available to applicants for asylum and immigrants.

*JEAN MONNET CENTRE OF EXCELLENCE ON MIGRANTS' RIGHTS
IN THE MEDITERRANEAN*

COUNTRY REPORT

COUNTRY: Spain
YEARS: 2014-2017

INTRODUCTION – OVERVIEW OF THE COUNTRY

Over the last 20 years, migration to Spain has become an important demographic and economic phenomenon. In Spain more than 12% of the total population (5,294,710 people) is represented by foreigners living in the country. Among them, 2,563,803 foreigners come from European Union countries and 2,730,907 foreigners from countries outside the European Union.

Since the first Asylum Law was approved in 1984, in the past year Spain recorded its greatest number of people applying for international protection, 15,755, with an increase of 874 compared to 2015. However, the number of applications for international protection in Spain remains very low compared to the European average.

According to Eurostat, the government in 2016 granted some form of international protection to 6,855 people. However, only 355 people have been identified as refugees, most of them coming from Syria, Pakistan, Eritrea and Palestine. This means that an extremely low percentage (only 3.4%) of people have seen their applications approved; a very different situation from Germany (41%) and France (21%).

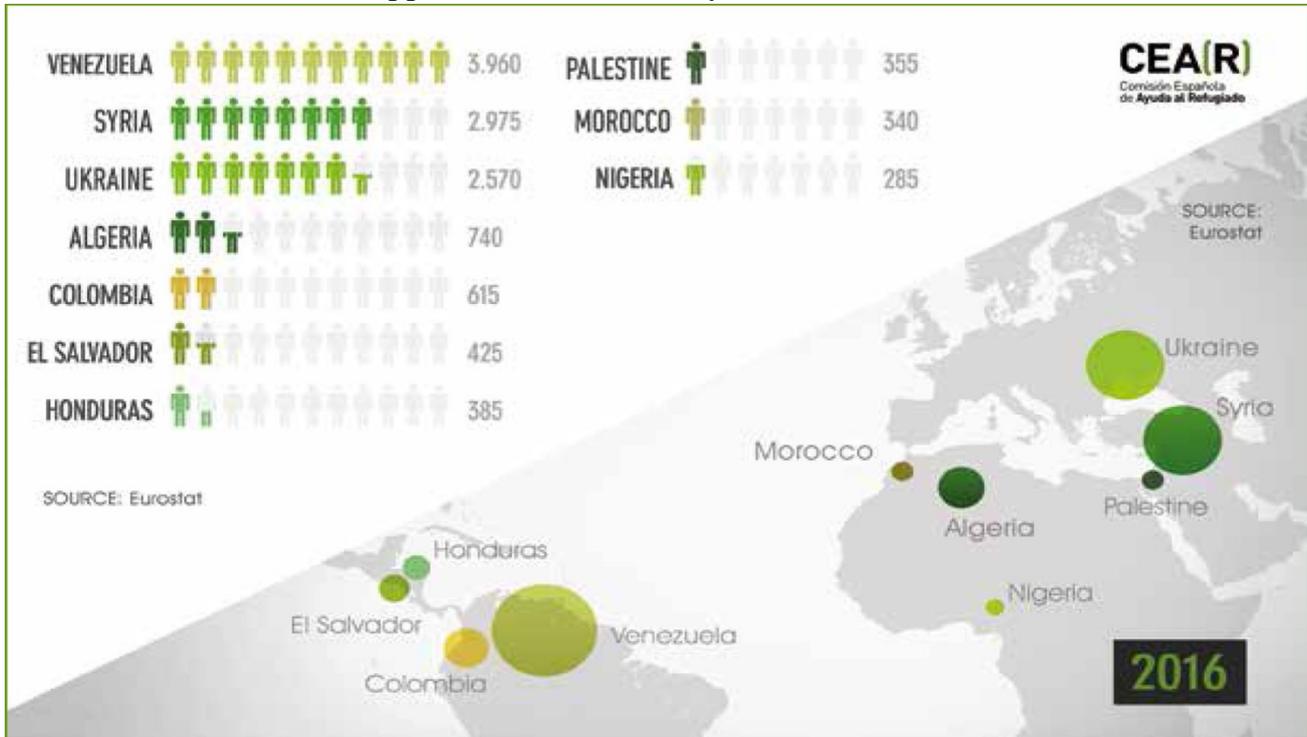
It is worrying, however, that while the international protection granted by the Spanish government to Syrian refugees is positive, the same treatment has been denied to those who are running away from other serious conflicts, such as those in Ukraine and Mali.

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International Protection Applicants for Nationality:



SECTION 1 – ACCESS TO JUSTICE

The right of asylum in Spain is included in article 13.4 of the Constitution: “4. The law shall lay down the terms under which citizens from other countries and stateless persons may enjoy the right to asylum in Spain”. As a result of the constitutional mandate, *Ley 5/1984* regulates the right to asylum and refugee status. That law was amended 10 years later, by *Ley 9/1994*.

Afterwards, *Ley 12/2009* (‘Asylum law’) regulating the right to asylum and subsidiary protection was enacted. For the first time the law specifically includes the right to subsidiary protection. It also introduces a new channel of family reunification such as special consideration of vulnerable groups, and raises legal status obligations on material reception conditions. Lastly, this law was modified by *Ley 2/2014*, which added a section to article 40.1, with the aim of fully incorporating article 2.j) of the 2011/95 EU Directive.

In order to apply for asylum in Spain, a formal request must be made to the competent authorities, which may be filed in the Spanish territory or at the border.

Ley 12/2009 does not mention the actual authorities who are competent to receive applications for international protection. Royal Decree 203/1995, still in force in so far as not modified by subsequent laws, indicates that the request can be submitted to the Office of Asylum and Refuge (OAR), any Foreigners’ Office, Foreigner Detention Centre (CIE) or police station; on the contrary if asylum seekers are outside the Spanish territory, the competent authorities are border control officers. Article 38 of the Spanish asylum law provides for the possibility of requesting international protection to Spanish embassies and consulates.

In general, the OAR centralizes the instruction and processes all international protection applications that are formalized in Spain, both in the territory and on the border, as well as the processes and resolution of cases of statelessness. Spanish law foresees an ordinary procedure (art. 24 Spanish asylum law) and an urgent procedure (art. 25 Spanish asylum law).

According to the ordinary procedure, after submitting the formal application, the OAR, which is an authority subordinate to the Ministry of the Interior, is responsible for the processing of applications for international protection. It has a one-month period to examine the formal aspects of the request (i.e. its admissibility). After that period of time in which the OAR has not pronounced on the issue, the application is admitted in accordance with the Spanish law on tacit consent. If the OAR decides, it may consider the application admissible or not.

The OAR may consider the application as inadmissible on the following grounds: lack of jurisdiction for examination of the application, or failure of the formal requirements. If the application is declared inadmissible, the applicant may appeal for reversal (*Recurso de reposición*). Instead, if OAR declares the application admissible, the Ministry of Interior has a six-month period (nevertheless it is actually a much longer time) to examine the request. In the meanwhile, the applicant will receive new documentation “*tarjeta roja*” (Red card) that certifies his status as asylum seeker.

At art. 18 of the Asylum Law the following rights are recognized to applicants: “*a) to be documented as applicant for international protection; b) to free legal aid and interpreter; c) to communicate your request to UNHCR; d) to the suspension of any process of return, expulsion or extradition that might relate to the applicant; e) to know the contents of the file at any time; f) to health care in the exposed conditions; g) to receive specific benefits in the terms included in this law*”. Legal assistance to asylum seekers is guaranteed by Spanish legislation and even by Article 18(1) b) of the Asylum Law from the beginning and throughout all stages of the procedure. This assistance is provided free of charge to those who lack sufficient financial means.

The main problems for the registration of asylum applications lie in border control posts with Morocco, in particular Ceuta and Melilla. The principal obstacle in these checkpoints is crossing the border of Morocco. The UNHCR intervened in Ceuta and Melilla border posts without improving the situation. *Ley 4/2015*, on the protection of citizen security, included a provision that modifies the *Ley Orgánica 4/2000*, on rights and freedoms of foreigners in Spain and their social integration. The provision states in paragraph 1 that foreigners who are detected in the border line of the territorial demarcation of Ceuta or Melilla, while trying to overcome the fences of border contention to cross the border irregularly, may be rejected in order to prevent their illegal entry in Spain.

Such notwithstanding, the practice of pushbacks raised some alarming cases of violence suffered by migrants at the Spanish border between 2014 and 2017.

The Ceuta Case - On 6 February 2014, a group of around 400 people tried to swim around the border between Morocco and the Spanish territory of Ceuta. As they swam, Spain’s police force, the Guardia Civil, attacked them with tear gas and rubber bullets. At least 15 people were killed, and many were seriously injured. On January 2017, section VI of the Provincial Court of Cádiz, based in Ceuta ordered the reopening of the investigation on this case.

The Melilla Case - In this case, on 13 August 2014, two men (one from Mali and one from the Ivory Coast) climbed the border fences at Melilla to reach Spanish territory. Because the fences are on Spanish soil, they had effectively entered the EU. Subsequently, the two men, along with roughly 70 other subSaharan individuals, were seized and immediately pushed-back to Morocco by Spanish border guards. They could not seek international protection, or appeal their imminent deportation. Recently the European Court of Human Rights ruled on the point in its judgment of 3 October 2017, for violation of art. 4 of Protocol 4 and Art. 13 CEDU.

SECTION 2 - SOCIAL SERVICES FOR MIGRANTS (EDUCATION AND WORK)

As regards education, minors in Spain have the right to education, and the schooling of minors is compulsory from age 6 to 16. This right is not explicitly outlined under the Asylum Law but is guaranteed by other rules on foreigners and minors. The *Ley Orgánica 4/2000*, on rights and freedoms of foreigners in Spain and their social integration includes the right to education of foreigners, specifically, this law, in article 9, defines the following points regarding the Right to education: “1. *Foreigners under the age of sixteen have the right and duty to education, which includes access to basic, free and compulsory education. Foreigners under the age of eighteen also have the right to post-compulsory education. [...] 2. Foreigners over the age of eighteen who are in Spain have the right to education in accordance with the provisions of educational legislation. [...] 3. The public authorities will promote that foreigners can receive teachings for their better social integration[...]*”.

The regime followed for the integration of children of asylum seekers in the school varies depending on the autonomous community in which they are placed. In fact, each Regional Administration manages and organizes the school systems. Some communities have tutors within the normal class, while others rely on preparatory classes, and some do not offer extra or specialized services to facilitate integration within the class. In practice, asylum seekers’ children are generally taken to school, even during the first phase in which they are housed in asylum facilities. Nonetheless, a weakness has been reported concerning asylum-seeking minors accessing education, regarding children hosted in the CETI (*Centros de estancia temporal de inmigrantes*) in times of overcrowded conditions. The CETI of Ceuta and Melilla do not meet the necessary reception conditions. Although recently and after several complaints from the NGO they have improved some aspects, such as specific attention to children, these changes are still not sufficient. Furthermore, in the streets of Melilla, minors mainly from Morocco and Algeria, who are under the supervision of Melilla’s Autonomous administration, having entered Spain as irregular unaccompanied minors or unaccompanied asylum seekers, do not have access to basic social services to which they are entitled and therefore live on the street. Due to the poor conditions of the Melilla Centre of Protection of Minors in which they should live because they are under the administration’s custody, they are just looking for a way to reach the Spanish mainland.

The labour market is fully accessible to refugees under equal conditions to nationals and is not limited by law.

Once the application is submitted, asylum seekers have the right to access the Spanish labor market six months after the application is filed. Once the deadline has expired, they can request renewal of the documentation, their Red Card (“*tarjeta roja*”), in which it will appear that they are authorized to work in Spain. During the six months in which their application is examined asylum seekers are encouraged to improve their employability, and thus be able to find a job according to their training and previous work experience, such as signing up for Spanish courses (in case they do not know the language) or registering with the Public Employment Service, in order to access vocational training for employment. All this is accompanied by the Ariadna Network, created by the three main NGOs that manage asylum reception centres: Accem, the Red Cross and CEAR. This is a global action plan that aims to meet the specific job-integration requirements presented by asylum seekers and beneficiaries of international protection. Programs that are offered to hosted asylum seekers include services such as personalized interviews, pre-employment training, vocational training, and active job search support.

In practice, however, asylum seekers face many obstacles in accessing the Spanish labour market, due to language, qualifications, and discrimination-based obstacles.

As regards the possibility for asylum seekers to be recognized their professional studies or qualifications, normally during the first phase of reception and when this is feasible, financial support is provided.

This financial support is important because the process of recognition is burdened with the costs of legalization and translation of the documentation. In most cases, however, financial support is often insufficient to ensure full coverage of recognition costs. Also in this case, in practice, asylum seekers face various obstacles.

SECTION 3 – BORDER CONTROL AND VIOLATION OF HUMAN RIGHTS

The situation of border controls in Spain is not satisfactory. In most cases the rights of migrants and refugees are not respected in Ceuta and Melilla. These two autonomous cities are compared by Amnesty International, to a “limbo”, an area where law enforcement is not guaranteed and where human rights violations are regularly perpetrated. Illegal pushbacks, police abuse, discrimination based on nationality and the lack of appropriate conditions in CETI are some of the human rights violations reported. Entry to the Spanish peninsula from Ceuta or Melilla is extremely difficult. Not only because of the fences, but also due to the fact that it is almost impossible to apply for international protection at the borders. The asylum offices are closed most of the time and frequently only the people coming from the Syrian conflict have a real possibility of applying for asylum. To these difficulties must be added that sometimes those who try to reach the border are intercepted by Moroccan forces.

The situation of migrants and refugees does not improve once they cross the border. CETI in Ceuta and Melilla do not satisfy the necessary reception conditions. Although recently and after several UN complaints, some aspects have been improved, the Spanish reception system for asylum seekers remains inadequate, with insufficient official reception centers and very little assistance for those who require it. Furthermore, acts of discrimination have been documented in relation to the unequal treatment of asylum seekers of non-Syrian nationality. Illegal pushbacks are common in Spain, despite being prohibited by international law, and continue to be carried out without any legal guarantees and with an excessive use of force. Lamentably, there are several complaints before the ECtHR. The number of irregular arrivals of refugees and migrants who move from Morocco to the Spanish enclaves of Ceuta and Melilla through the fence of the two countries decreased during last year, albeit the overall number of arrivals, including those who cross through regular borders, has increased.

Moreover, children are in danger due to the unlawful operations of the Spanish Civil Guard who do not take into account their special need for protection as minors. This became clear in December 2014 when an unaccompanied minor refugee from Mali, was pushed back after he had climbed the border fences at Melilla to enter the Spanish enclave. A complaint was immediately filed before the UN Committee on the Rights of the Child in December 2015.

FINAL REMARKS

Spain has dealt with a large influx of migrants over the past two years, albeit to a lesser extent than other European countries, and has encountered difficulties in managing this flow with respect to human rights. The principal obstacles faced by migrants traveling to Spain concerned access to legal assistance in order to be able to seek asylum at the borders. In fact, as mentioned above, cases regarding refusal of entry, collective expulsion, push-backs at the Spanish border are frequently reported. Even though generally denounced, these illegal practices are widely adopted. Asylum seekers whose rights are not recognized are therefore victims. In the Spanish system of reception for migrants, difficulties are also caused by the tight deadlines provided for in the procedures of national law, as well the fast enforcement of removals and forced returns once admission to the procedure is rejected. Many improvements have been made over the years, but unfortunately they are not yet fully satisfactory.

