



The project is co-financed with the support of the European Union's Justice programme

TRALIM **SPAIN**

Online training event for presenting the Spanish legal system regulating immigration and asylum



4 February 2021
09:30 CET

Online
Zoom Platform

09
30

OPENING

Victoria ORTEGA BENITO
President of the Spanish Bar

09
45

PRESENTATION ON THE
MIGRATORY POLICY IN SPAIN

Noemí ALARCÓN VELASCO
Expert of the Spanish Bar's Working
Group on Migration

DISCUSSION ON THE ROLE OF
THE LAWYERS IN IMMIGRATION
CASES IN SPAIN

*Video (step-by-step explanation of the
asylum and migration procedure)*

**followed by a break 11:10 - 11:30*

10
40



11
30

THE ROLE OF
RECEPTION CENTERS
IN SPAIN

Elena ARCE JIMENEZ
Head of the Migration and Equal Treatment
Department of the
Spanish Ombudsman



12
10

SEA ARRIVALS AND
ACCESS TO
INTERNATIONAL
PROTECTION (SPAIN)

**María VALLES
FERRERO**
Senior Protection
Associate, UNHCR

CLOSING SPEECH

David CONLAN SMYTH
Chair, CCBE's Migration
Committee



Funding
programme



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the European
Union

Sea arrivals and access to international protection in Spain

Tralim SPAIN, 4 February 2021



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The role of the UNHCR globally

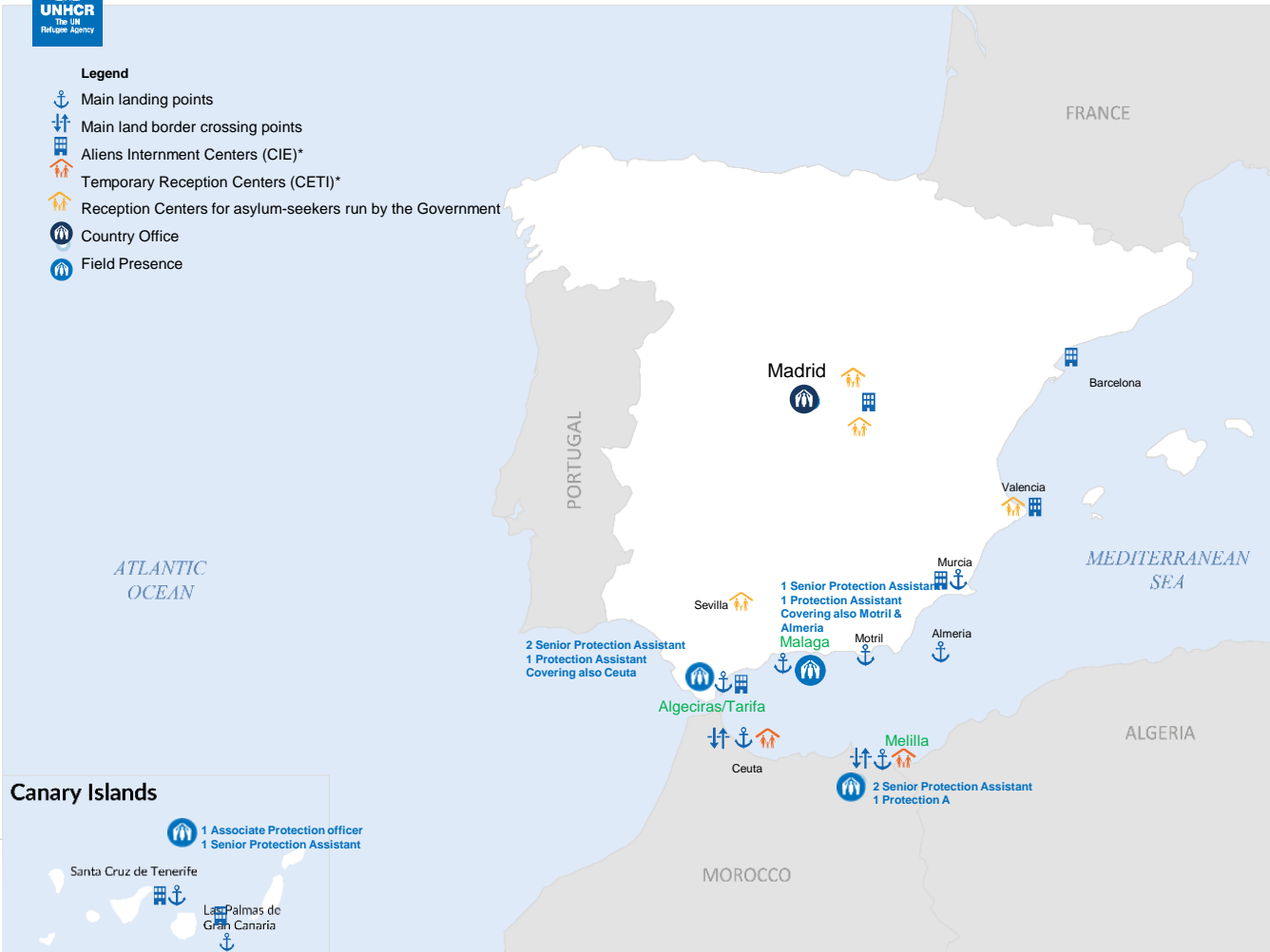
- UNHCR has a supervisory responsibility over Governments' implementation of the 1951 Refugee Convention (art. 35 of the Geneva Convention)
- UNHCR's work: humanitarian and non-political
- **Mandate:** To provide international protection to refugees and to seek durable solutions to their problems
- In support to Governments which remain primarily responsible for the provision of international protection
- UNHCR role, Spanish Asylum Law 2009

Sea arrivals and UNHCR permanent presence



Legend

-  Main landing points
-  Main land border crossing points
-  Aliens Internment Centers (CIE)*
-  Temporary Reception Centers (CETI)*
-  Reception Centers for asylum-seekers run by the Government
-  Country Office
-  Field Presence



Access to information and asylum: since summer 2018 together with UNHCR Implementing Partner - CEAR



Legal Framework

International Treaties

- ✓ 1951 UN Refugee Convention and its Protocol of 1967

EU Law

- ✓ EU Charter of Fundamental Rights
- ✓ Schengen Borders Code
- ✓ EU *acquis* on asylum: the EU has been working towards a **Common European Asylum System (CEAS)** (to harmonise national asylum systems and ensure that all asylum-seekers in the EU are treated under similar conditions)

National legislations

- ✓ In Spain Migration legislation and **Asylum Law**

Access to the Asylum Procedure.

EASO and Frontex Practical Tools for First-Contact Officials

https://www.youtube.com/watch?v=46g_F_kzljI

https://www.easo.europa.eu/sites/default/files/public/Practical-Guide1_0.pdf

https://www.youtube.com/watch?v=46g_F_kzljI

EASO **FRONTEX**

Access to the Asylum Procedure

- 1 Anyone can be a refugee
- 2 Everyone is entitled to protection against *refoulement*
- 3 Vulnerable persons must be identified and adequately supported
- 4 Best interests of the child take precedence in all actions concerning children
- 5 Anyone who may wish to apply for international protection must be informed about their right to do so
- 6 Everyone has the right to apply for international protection
- 7 Any sign or expression of fear can be understood as a request for international protection
- 8 Applicants for international protection must not be penalised due to their illegal entry or presence
- 9 Each application must be registered or referred for registration to the responsible authority
- 10 The principle of *non-refoulement* must be ensured, even when a person does not apply for asylum

Access to asylum under EU Law

“Ensuring access to the asylum procedure is an obligation of MS”, stipulated in Article 3a of the Schengen Borders Code. Further enhanced by the EU asylum *acquis*, especially by the recast **Asylum Procedures Directive (APD)**.

The recast APD introduces, among others, **two key provisions** that have a direct effect on your daily work:

Article 8 APD recast requires you to **provide information** about the possibility to apply for international protection when there are indications that a person held in detention facilities or present at external border crossing points may wish to do so. In practice it means that you have to be proactive in identifying such a person, inform him/her about the right to apply for asylum and advise him/her on how to make the application.

Article 6 APD recast requires you to **refer** a person who has expressed an intention to apply for international protection (i.e. who **made an application for international protection**) to the asylum procedure by informing him/her as to where and how the application for international protection may be lodged”

SPANISH CONTEXT

**Mixed Flows:
different rights, different
needs but...**

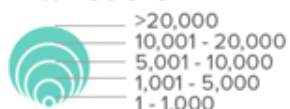
- All Human Rights holders
- Balance between different interests : border management and control, and international protection and humanitarian assistance



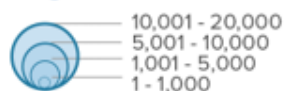
Sea and land arrivals, asylum applications and resettlement in Spain 2020

- **Sea and land arrivals: 41.861 persons** (+29% compared with 2019)
- **Asylum applications: 88.762 persons** (-25% compared with 2019)
- **Resettlement: 1.263 persons** (2018 - 2020)

Solicitudes de protección internacional



Llegadas



SPAIN SEA AND LAND ARRIVALS

1 Jan- 31 Dec 2020

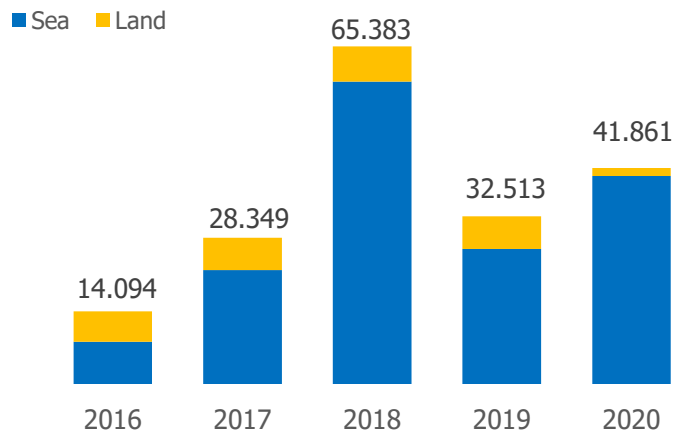
Location of refugee & migrant arrivals¹



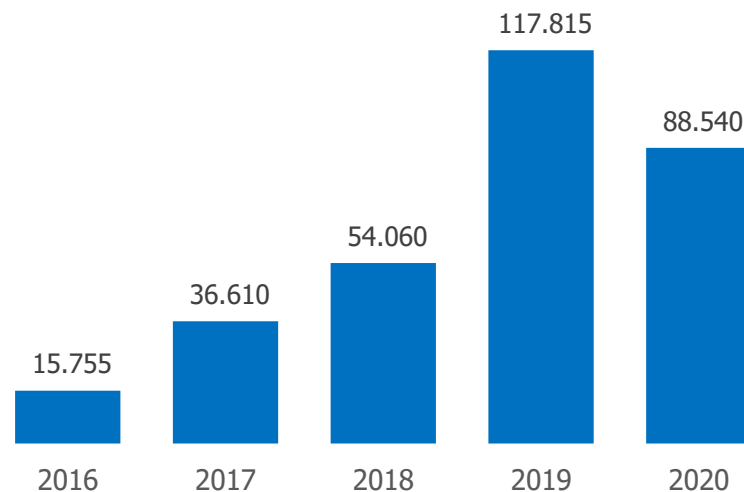
The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations

Arrivals vs asylum applications

Sea and Land Arrivals to Spain
2016 - 2020

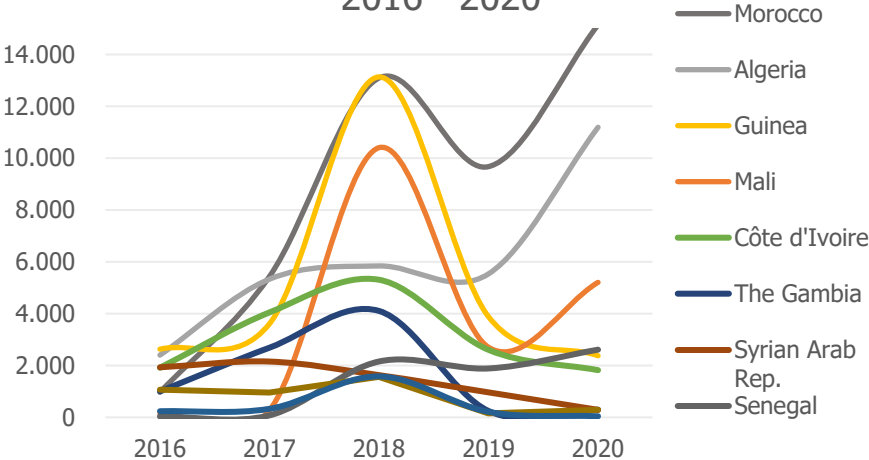


Asylum Applications
2016 - 2020

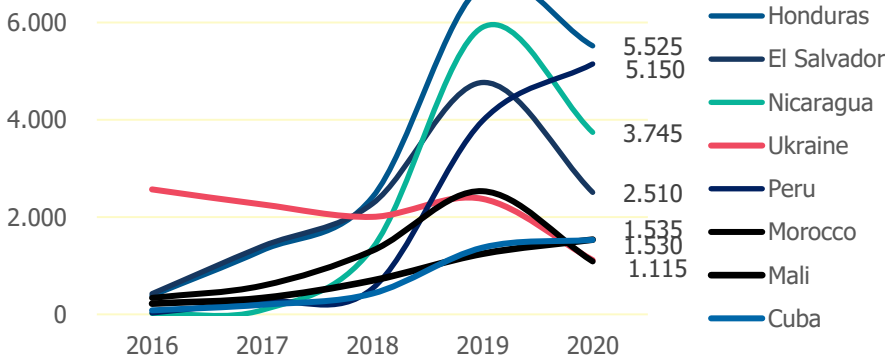


Nationalities arrivals vs asylum

Main Nationalities of Sea and Land Arrivals
2016 - 2020



Asylum Claims Main Nationalities
(without Venezuela and Colombia)
2016 - 2020



Persons very likely in need of International Protection arriving by sea

- Nationals of **areas affected by on-going conflict/instability**: Mali (Northern and Central Mali), DR Congo, Nigeria (Borno, Yobe and Adamawa), CAR...
- **Political activists/attributed political opinion**: individuals that rallied against the govt., leaders, members of some political parties...
- Victims of persecution for **religious or ethnic identity**.
- **Women** victims of trafficking, domestic violence, FGM, women contravening social mores, forced marriage..
- **LGBTI**, sexual orientation or identity: prosecution and societal stigmatization.
- **Medical needs**: persons living with HIV, albinism
- **Minors**: **unaccompanied children** victims of abuse, slavery, victims of human trafficking.

Do they have access to asylum procedures?

Making an application for international protection in Spain

- The applicant may file the international protection claim in the following places:
 - (i) Entry points at **international border crossings**
 - (ii) Within the territory of Spain at OARs (Spanish Asylum Office), in some of the foreigners offices of the autonomous communities, or at **police stations**
 - > **Document issued at Police Stations: Expression of intention to seek asylum**

Registration of intention to seek asylum.

- ❖ Document issued by the National Police
- ❖ Legal framework: Article 6 (2013/32/EU Procedure Directive)
- ❖ Legal effects:
 - ✓ Protection from refoulement
 - ✓ First step to enter the support program for asylum seekers carried out by the Ministry of Labour implemented by NGOs

MANIFESTACIÓN DE VOLUNTAD DE PRESENTAR SOLICITUD DE PROTECCION INTERNACIONAL

Este documento acredita la intención del afiliado de presentar solicitud de Protección Internacional y AUTORIZA al titular a permanecer en España hasta la fecha de caducidad.

FOTO

Nº REFERENCIA:

Nombre:
Apellidos:
Hijo de:
Fecha Nacimiento:
País:
Nacionalidad:
Sexo:
Nº de Pasaporte: F. Cad:
F. Exp:
Dirección:
CP:
Localidad:
Teléfono:

El interesado deberá comparecer el día --/-- a las --:-- horas en la sede de esta Brigada Provincial para presentar formalmente la solicitud de protección internacional, acompañada de todos los documentos que considere.

Este documento CADUCA el día --/--

Expedido en -----, a --/--.

ADVERTENCIAS

Este documento, que no supone la presentación formal de la solicitud de protección internacional, garantiza la "no devolución" de su titular hasta la fecha en que haya comparecido y formalizado dicha solicitud o hasta la fecha de su caducidad.

A la fecha de citación de comparecencia arriba indicada, su titular tiene la obligación de personarse en el lugar donde haya sido citado y presentar formalmente la solicitud de Protección Internacional. La no comparecencia en el día citado implicará la pérdida de cualquier derecho derivado de este documento, entre ellos el de garantizarle la "no devolución" referido en el párrafo anterior.

El interesado deberá entregar el presente documento el día en que formalice la solicitud de protección internacional.

Este documento carece de validez para el cruce de fronteras (Reglamento CE 652/2006, Código de Fronteras Schengen y Acuerdo de Adhesión de España al convenio Schengen).

Key messages for lawyers

- Inform the person about the national asylum legislation and procedure in a language he/she can understand
- Have an open mind – don't pre-judge- be aware of cultural differences/barriers
- Remember, the claim will be decided in another, more thorough procedure
- Listen carefully to what the person is saying and be understanding

Thank you for your attention!

UNHCR Spain



TRALIM 2 Spanish
legal system regulating migration and
asylum



The project is co-financed with the support of the European Union's Justice programme



Madrid, 4 February 202

Noemí Alarcón Velasco

Spanish Lawyer, Expert of the Spanish Bar's Migration Committee

Vicechair of the Migration Committee, CCBE

SUMMARY
2. MIGRATION

1. ASYLUM



Let's start!

Asylum



-
- *Asylum law (2009) (Ley de Asilo)*
-
-
-
-

- *No regulation developed, use of the 95' Regulation (Royal Decree) for certain aspects that are not in conflict with the 2009 Law.*
-
-
-
-

- *No CEAS (Common European Asylum System) Directives transposed, just the Qualification Directive /2011 has been transposed.*
-
-
-
-

-
- **Migration Law** (*Ley Orgánica de Extranjería 4/2000*) contains rules that applies also for asylum seekers and refugees (*Ley de Extranjería y Reglamento de extranjería*).
-



CASE-LAW

1.-ECtHR N.D. and N.T. v. Spain -- Article 4 Protocol 4, Article 13 ECHR-- 3 October 2017

--> **GRAND CHAMBER JUDGEMENT -- 13 FEBRUARY 2020:** No violation Article 4 Protocol 4 (Prohibition of collective expulsion), No violation Article 13 ECHR (the right to an effective remedy).

2.- Access to reception conditions for Dublin returnees: TSJ Madrid (Superior Court of Madrid), Judgement 7.12.2018.

3.- Free movement of asylum seekers from Ceuta/Melilla (enclaves) to the Peninsula

Judgement of TSJ Madrid nº 671/2019 (25.10.2019) + Judgement of Supreme Court nº 1128/2020 (29/07/2020) recognise the right to free movement of asylum seekers once their application has been admitted.

4.- Humanitarian protection versus International protection for Venezuelans: *Audiencia Nacional 26/06/2018 (case 456/2017) and 1/10/2018 (case 408/2017).*

5.- CJEU: C-36/20 (25 June 2020) *concerning the interpretation of “other authorities” competent to receive asylum applications (examining magistrate) and the use of detention measures in cases where it is not possible to find accommodation in a humanitarian protection centre*

6.- Supreme Court, Judgement nº 1773/2020 (Sala de lo Contencioso-Administrativo Sección Vª - 17 December 2020) *concerning the doctrine to resettlement and ordered to interpret Spanish Asylum law in the sense to give the same status that the person has been given in the first country of recognition (Refugee Status v. Subsidiary Protection.)*

Migration



LEGISLATION

Migration Law (*Ley orgánica de extranjería 4/2000 reformed several times, L.O. 2/2009*) + *Regulation: Royal Decree 557/2011*

Specificities:

The law and regulation have integrated forms of alternative to detention and have a particular and alternative system of applying a fine instead of an expulsion/return in cases where there is a minor infringement (controversial, see case-law CJEU Zaizoune).

The law has developed a regularisation system of undocumented migrants after a period of staying in the country, mainly of 3 years.

CASE-LAW

Zaizoune (CJEU C - 38/14) 23 April 2015: Return directive, common standards and procedures for returning illegally staying third-country nationals, Articles 6(1) and 8(1).

+

POST-ZAIZOUNE DOCTRINE: C-568/19 (8 October 2020): it is possible to apply domestic law even if it is more beneficial to irregular migrants than the Return Directive.

Arrivals by sea: practice in Spain and hot spot approach?



CONTEXT: *South borders, 2016 --> 2021*

2020-21: Canary Islands route reactivation

Other entrances: Ceuta and Melilla

Spain has not hot spots declared as in Greece and Italy

Analogies, but different approach

Procedure/s in arrivals by sea: Main actors

- *Salvamento Marítimo/Guardia civil: public*
 - *National police*
 - *Frontex*
 - *Cruz Roja (Spanish Red Cross)*
 - *UNHCR*
 - *Save the Children*
 - *Legal Aid Lawyers*
-

(Other NGOs could assist but when migrants are in the humanitarian or reception system)



1 - Early legal assistance/ legal advice

Role of lawyers in the first period of time of an arrival: 72 hours

give legal advice upon the arrivals

ensure that fair conditions are applying: individual, confidential and reserved interview with their clients, have access to an interpreter

information about rights and procedures

help to detect persons in need of international protection/ vulnerabilities

representatio

special consideration to children: giving child-friendly advice

After this period of time:

administrative and judicial appeal

try to stay in contact with clients



GAPS

- unaccompanied children/ children on the move: no attention paid to refugees unaccompanied children no access to legal representation
- age assessment procedure: Spain has been sentenced several times for violating the CRC by the UNCRC: in case of doubt a child must be considered minor and it is necessary to name a legal representant and tutor while the ongoing procedure, as a measure of protection
- detection of other vulnerabilities
- reception conditions system: under reform and it is the first time a MOE has been signed with EASO and they will carry on this reform and give support in the Canary Islands.

The Ombudsman is the high commissioner of the Spanish Parliament, in charge of defence of citizen's rights.

Any citizen, Spanish or foreigner, regardless of age or legal situation in Spain, either individually or as a group, may present a complaint to the Ombudsman.



The Ombudsman's activities

- **Non-jurisdictional and non binding supervision**
- **Suggest or recommend any Administration to adopt steps to alleviate or correct the situation**



EMN GLOSSARY

The EMN Glossary – as one of the key products of the EMN - improves comparability by enabling a common understanding and use of terms and definitions relating to asylum and migration.



Reception centre

A location with facilities for receiving, processing and attending to the immediate needs of refugees or asylum seekers as they arrive in a country of asylum



Irregular arrival

In the Schengen context , the entry of a third-country national into a Schengen Member State who does not satisfy Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) .



In Spain

IN PRACTICE

- ¿Reception centres= Detention facility?



Detention facility

- **In the EU return context, a specialised facility to keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/ or carry out the removal process, in particular when:**
 - **(a) there is a risk of absconding; or**
 - **(b) the third-country national concerned avoids or hampers the preparation of return or the removal process**



Detention standards and conditions

- the right to legal remedies, the rules of detention procedures, communication with legal advisers, counsellors and persons representing international and non-governmental organisations, material conditions of accommodation, personal development, access to healthcare and measures to ensure order, safety and the protection of migrants in detention.



How to detect vulnerabilities?

The role of KEY ACTORS
**Lawyers: Presence? Legal
assistance?**



Vulnerable person

- **Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings...**



Vulnerable person

- **persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.**



How to detect vulnerabilities?

- Improve authorities capacities
- Other key actors: **lawyers: Presence vs effective legal assistance**
- **How to detect without PROPER INTERPRETATION?**
- **Ensure appropriate communication!**



Return Directive

**FOCUS ON: NON REMOVABLE
PERSONS**



- **Non-removability should not be treated as merely a temporary phenomenon.**
- **Individuals can remain non-removable for a very long period, even years or decades.**
- **No prospect of returning to their countries of origin, due to reasons independent of their own will.**
- **Non-removable persons may have family, economic or social ties in the country of residence.**



- **9.2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account: (a) the third-country national's physical state or mental capacity; (b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.**



- **14.2 Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 7(2) or that the return decision will temporarily not be enforced.**



NON REMOVABLE = INVISIBILITY.

- **NO RIGHT TO HAVE RIGHTS?**
- **OUR ROLE AS OMBUDSMAN?**
- **YOUR ROLE AS LAWYERS?**

