Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Noemí Alarcón Velasco

The EU Charter of Fundamental Rights provisions in relation to asylum and immigration

TRALIM 3 Las Palmas, 12 June 2024

Co-funded the European Union

LEGAL NATURE

- LEGAL DOCUMENT
- constitutional character
- protects rights of everyone in the Union
- primary law

EU LAW (type)

- Primary law: EU TREATIES + CHARTER + GENERAL PP OF EU LAW
- Secondary law: Decisions + Regulations + Directives..
- National law: Constitutions + Laws + Administrative decisions..

2 SOURCES OF HUMAN RIGHTS IN THE UNION

1) the (unwritten) general principles of law;
2) the Charter.

➔ 2 Both constitute **EU PRIMARY LAW**

"**General principles of Union law"** to refer to the unwritten court-made general principles inherent in the rule of law that can be invoked before courts as grounds for legal review.

This source of law includes:

- the principle of legal certainty

- the principle of legitimate expectations

- the principle of proportionality.

EU CHARTER

- Human rights: political, social and economic rights → common EU values
- 50 entitlements + 4 general provisions
- Modern and Living instrument that can be adapted to circumstances.
- Add protection at the level of the EU.

All EU legislation and all national law implementing EU law have to be in compliance with EU charter.

2 characteristics:

- SUPREMACY, the charter overrules national law
- DIRECT EFFECT, it can be directly invoked at national level and even sometimes between private parties.

CONTENTS: 7 CHAPTERS

1. **dignity:** protecting life and integrity, contains prohibition of trafficking in human beings (novelty); Article 2: right to life; Article 4: prohibition of torture and ill treatment;
2. **freedoms**: classical civil rights (+ new feature such as the asylum right);
3. **equality:** gives protection to specific groups (e.g. provision of discrimination; provisions on children's rights, rights on elderly person or disability);
4. **solidarity**: social economical rights (modern and new);
5. **citizens' rights**: participation in the administrative, and political system of the EU (just have these rights in the EU charter not in another human rights catalogue)
6. **justice**:

- Article 4 – fairness before courts and any kind of legal proceedings and transnational level HR.

- Article 47 - Right to an effective remedy and to a fair trial- add value: it's not only for civil and criminal proceedings but also for any sort of procedure including administrative, such as asylum.

CONTENTS – 4 GENERAL PROVISIONS

7.1. Scope

- **for the EU:** the charter always applies
- **MS**: only applies when implementing EU law

→ **What does it mean?** According to the CJ case law: when Member States are acting applying EU law (for example EU secondary law)

7.2. Limitation of charter rights: not for absolute rights (right to life, prohibition of torture..), must be provided by law, in respect of the essence of the right and in line with the principle of proportionality.

CONTENTS – 4 GENERAL PROVISIONS

7.3: interpretation of the meaning and scope of the charter provisions there is a relation with the ECHR:

Article 52 establishes the meaning at scope of those rights should be the same as those laid down by the ECHR. EU law could provide a more extensive protection.

Concrete example in asylum and migration

Article 6 ECHR doesn't apply for this area of law. I remind you the scope of Article 6- **the right to a fair trial**- the access to a court and right to defence, this right only applies for civil and criminal proceedings in the ECHR. In case of a violation related with procedures, access to procedure, access to legal assistance or legal aid, the right to an effective remedy, etc.. if you are under the scope of the ECHR you must apply article 13 in conjunction with another right of the ECHR (ART 3 or ART 4 protocol 4…), but you cannot invoke Article 6.

CONTENTS

concrete example in asylum and migration:

With the charter, the scope of application is extended, as you can use article 47 p*er se*, for any kind of proceeding, including asylum and immigration proceedings, you don't need to use it in conjunction with any other right of the charter.

Union law may provide for more extensive protection: the right to asylum enshrined into article 18 is recognised in the charter but it's not enshrined in the ECHR. You have an extensive ECtHR case law but it is not a right explicitly included in the convention.

Relation with the ECHR: see Al Chodor

Possible conflict with national FRs

ARTICLE 52. 4

Constitutional traditions common to the Member States: those **rights shall be interpreted in harmony with those traditions**.

- National courts can apply the Charter
- Effect of the Charter within national law does not depend on the constitutional law of MS
- National courts are obliged to interpret national measures in conformity with the Charter
- National measures can be reviewed in the light of the Charter
- Where the Charter provisions are sufficiently precise and unconditional, they can have a direct effect → **This implies that national norms conflicting with the Charter are rendered inapplicable**.

- The direct effect allows individuals to invoke the Charter in proceedings before national courts. T**he direct effect of the Charter can also lead to the creation of rights that are not available in national law.**

Ex: **duty to provide suspensive effect:** the **Abdida case** concerned Belgian asylum law and is an example of Article 47 of the Charter (right to an effective remedy and to a fair trial).

Check if the Charter applies to your asylum case (under provision 51), article 18 applies? Is it an implementation of secondary EU Law into national law in your case? (CEAS Directives, Dublin III, Return Directive, etc). When national authorities or administration are implementing the CEAS directives this fall into article 18, so if there is a violation of any rights contained in those instruments, the charter applies.

2 kinds of legal pathways:

- claim the right before national court → preliminary ruling → CJEU
- European Commission → infringement procedure → CJEU

Relevant cases:

M.M. case

Laub case (Right to a good administration)

Joined cases of N.S. and M.E

MA and others

Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Maria Vales Ferrero

The Council of Europe legal system regulating asylum and immigration: instruments and case law

TRALIM 3 Las Palmas, 12 June 2024

Co-funded the European Union

The Geneva 1951 Convention and other instruments protecting refugees in the European context

Special considerations on the Council of Europe legal system regulating asylum and immigration: instruments and case law

Tralim SPAIN, 12 de junio 2024

UNHCR
The UN Refugee Agency

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

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Legal Framework

International Treaties

- ✓ 1951 UN Refugee Convention and its Protocol of 1967
- ✓ International Human Rights Law (in particular the Convention Against Torture)

Council of Europe

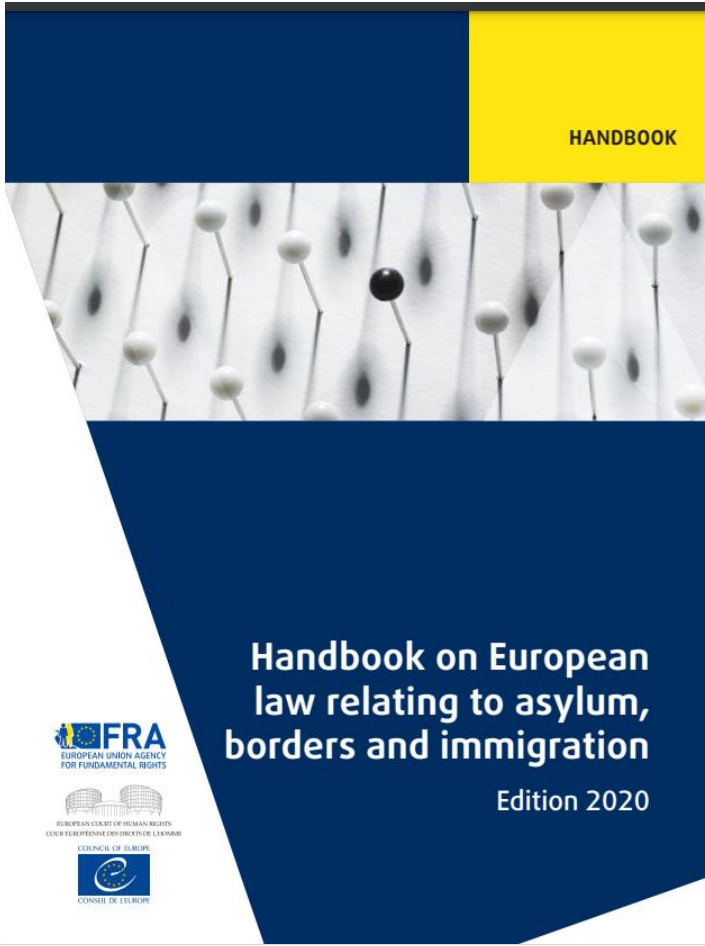
- ✓ European Convention of Human Rights

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**



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The principle of Non Refoulement

- **Article 33 Refugee Convention**
- **Cornerstone** of refugee **protection**.
- The **most important obligation of States** in relation to refugees and asylum-seekers: not to return them to a country where they are at risk of being persecuted or face inhumane or degrading treatment or punishment, including torture, even if they are in an irregular migratory situation .

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Who is a refugee? Art 1 A.2 Geneva Refugee Convention

A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.

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Other principles of refugee protection in Geneva Convention 1951

- Protection must be extended to all refugees without discrimination (art.3 GC51)

  – As persons escaping persecution often they may have to leave their country and enter another country in a regular manner: they **should not be penalised** for having **entered into or for being illegally** in the country where they seek asylum (art 31GC51)

  – **States bear primary responsibility to provide international protection to refugees**. If a State violates the rights of refugees, UNHCR's role is to intervene on behalf of the refugee. States Parties to the 1951 have an obligation to cooperate with UNHCR in the exercise of its mandate (art. 35 GC51)

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Council of Europe and asylum

The CoE was formed in the aftermath of the Second World War to bring together the European states to promote the rule of law, democracy and human rights. The CoE is composed of 46 member states, including all EU Member States.

In 1950, the CoE adopted the ECHR, which, under its Article 19, set up the ECtHR as a judicial mechanism to ensure that states observed their obligations under the Convention the protection of refugees is part of the protection of human rights, which is one of the primary responsibilities of the Council of Europe.

The Council of Europe never incorporated a right to asylum into a legally binding instrument, always asked its members to treat refugees and asylum-seekers in a "particularly liberal and humanitarian spirit", in full respect of the principle of non-refoulement.

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The ECtHR examines complaints from individuals, groups of individuals, NGOs or legal persons alleging violations of the Convention. It can also examine interstate cases brought by one or more CoE member states against another member state. An applicant before the ECtHR is not required to be a citizen or a lawful resident of one of the contracting states (2). Article 1 of the ECHR requires states to ‘secure’ the Convention rights to ‘everyone within their jurisdiction’

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SPAIN

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Country visit report

Available in: EN FR RU

Spain: address housing and health inequalities, safeguard freedoms of expression and assembly and provide safe and legal access to the territory for people seeking asylum

10/05/2023 | STRASBOURG

Council of Europe Commissioner for Human Rights Dunja Mijatović published today the report on her visit to Spain carried out in November 2022, with recommendations on social rights, in particular the right to housing and the right to health, the freedoms of expression and assembly and the human...

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ECHR

I. Access to the territory and procedures

Article 1 of the Convention

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 of the Convention

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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The principle of non refoulement at the ECHR

Linked to art. 2 and 3 of ECHR

The level of severity for determining whether treatment is considered prohibited under Art. 3 varies depending on the specific circumstances of the applicants
F.G. v. Sweden, GC, 2016, Tarakhel v. Switzerland, GC, 2014

Recent decisions considering that failure of the authorities to sufficiently investigate death or harm at the border implies the breach of art. 2 and/or 3
Alhoways vs Hungary, 2023, Safi and others vs Greece, 2022

Risk assesment

- a minimum level of severity
- shared obligation between the applicant and the authorities
  - for the applicant to adduce evidence capable of proving that there are substantial grounds of real risk
  - for the Government to dispel any doubts about the allegations and to verify the general circumstances in the country of destination: positive obligation to conduct an ex officio analysis
- the benefit of doubt

(F.G. v. Sweden, GC, 2016, M.S.S. v. Belgium and Greece, 2011)

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Protection of vulnerable asylum seekers

Decisions regarding gender related applications, sexual orientation, children and persons with mental health needs

- **Children**: specific needs related to their age, their lack of independence and their status as asylum seekers. (Rahimi v. Greece, Khan v. France, 2019, Darboe and Camara vs Italy, 2022)
- **LGBTIQ+:** Sexual orientation is a fundamental part of a person's identity and no one should be forced to hide it to avoid persecution (B and C v. Switzerland, 2020)

Reception conditions

Article 3 of the Convention requires that receiving States provide accommodation and decent material conditions to these asylum-seekers who are impoverished and wholly dependent on State support (M.S.S. v. Belgium and Greece, 2011)

There may be State responsibility when a person who depends totally on the support of the State is in a situation of serious precariousness incompatible with human dignity.

Increased migratory flows do not exempt the State from its obligations

Increased Rule 39 Interim measures regarding homelessness of asylum seekers (Msallem and 147 Others v. Belgium, 2022, Camara v. Belgium, 2022)

Detention

the measure can only be justified on two grounds: to prevent unauthorised entry onto the national territory or for the purpose of expulsion

detention must be carried out in good faith

(R.M. and others vs Polonia, 2023)

Implementation of ECtHR judgments

§ Binding force of ECtHR judgments (Art. 46 ECHR)

§ States have legal obligation to take

- individual measures (ceasing breach, providing reparation)

- general measures (ensuring non-repetition)

Committee of Ministers watchdog of the execution process

- Entrusted with the supervision (Art. 46 ECHR)
- Composed of representatives of 46 member states
- Meets 4 times a year in special DH-Meetings to discuss pending cases
- Assisted by the Department for the Execution of ECtHR Judgments

Who is part of the process ?

Defendant state (Action Plan, Action Report)

Injured party

Also NGOs, NHRIs & IOs (cf. Rule 9)

Opportunity for UNHCR and its partner NGOs to make communications

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The execution of A.C. and Others v. Spain

Questions & Observations

Currently under supervision by the Committee of Ministers, classified as **enhanced procedure**

According to the judgement, no remedy with an automatic suspensive effect in the Spanish legal framework

Communications under Rule 9 by CEAR and UNHCR

Recent Supreme Court decision interpreting EU law on effective remedy

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

Western Mediterranean Route (Mainland, Balearic Islands, Ceuta and Melilla- SPAIN)

Northwest African Maritime Route (Canary Island – SPAIN)

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

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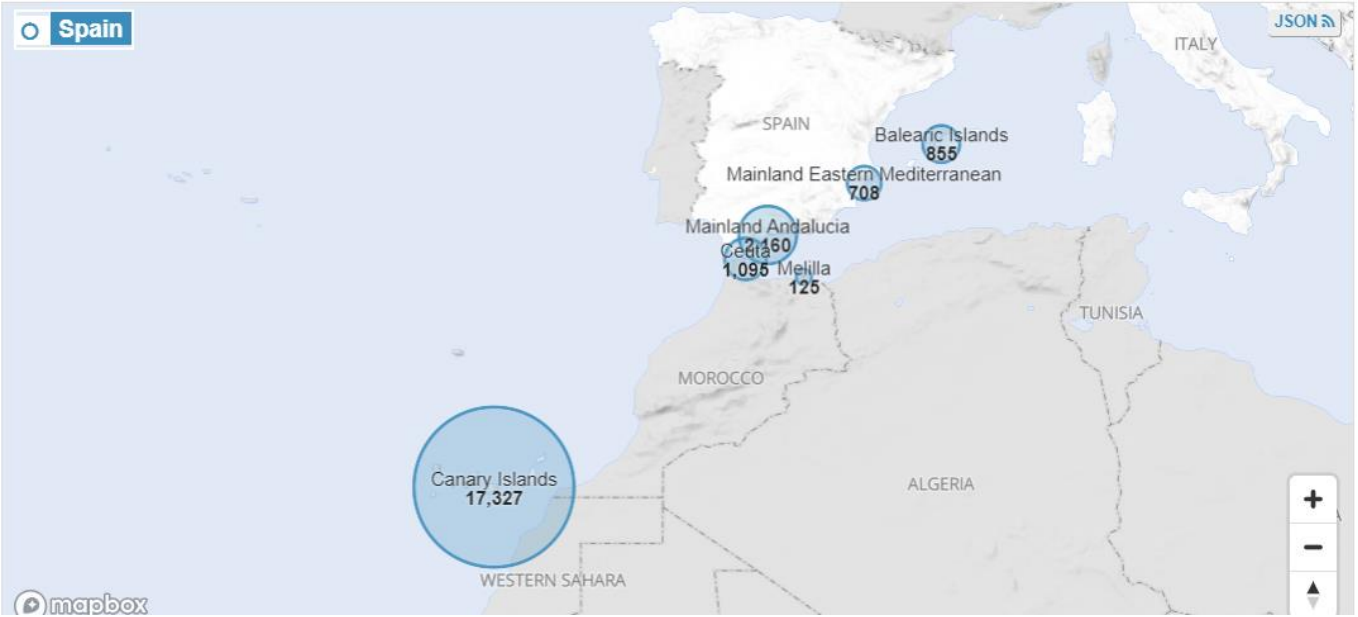
Sea and land arrivals in Spain 2024
(as of 2 June 2024)



Total arrivals in 2024 *

22,270

Last updated 02 Jun 2024

Sea arrivals in 2024 *

22,075

Last updated 02 Jun 2024

Land arrivals in 2024

195

Last updated 02 Jun 2024

Previous years **Sea arrivals***

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SPAIN: UNHCR Field presence

January 2021

Legal Framework

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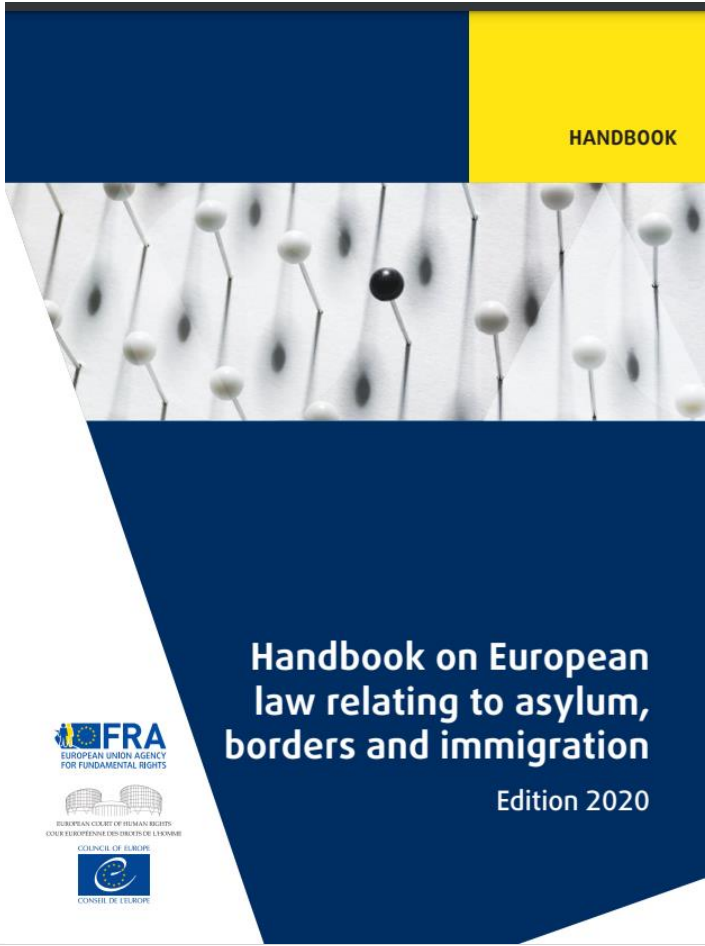

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Making an application for international protection in Spain

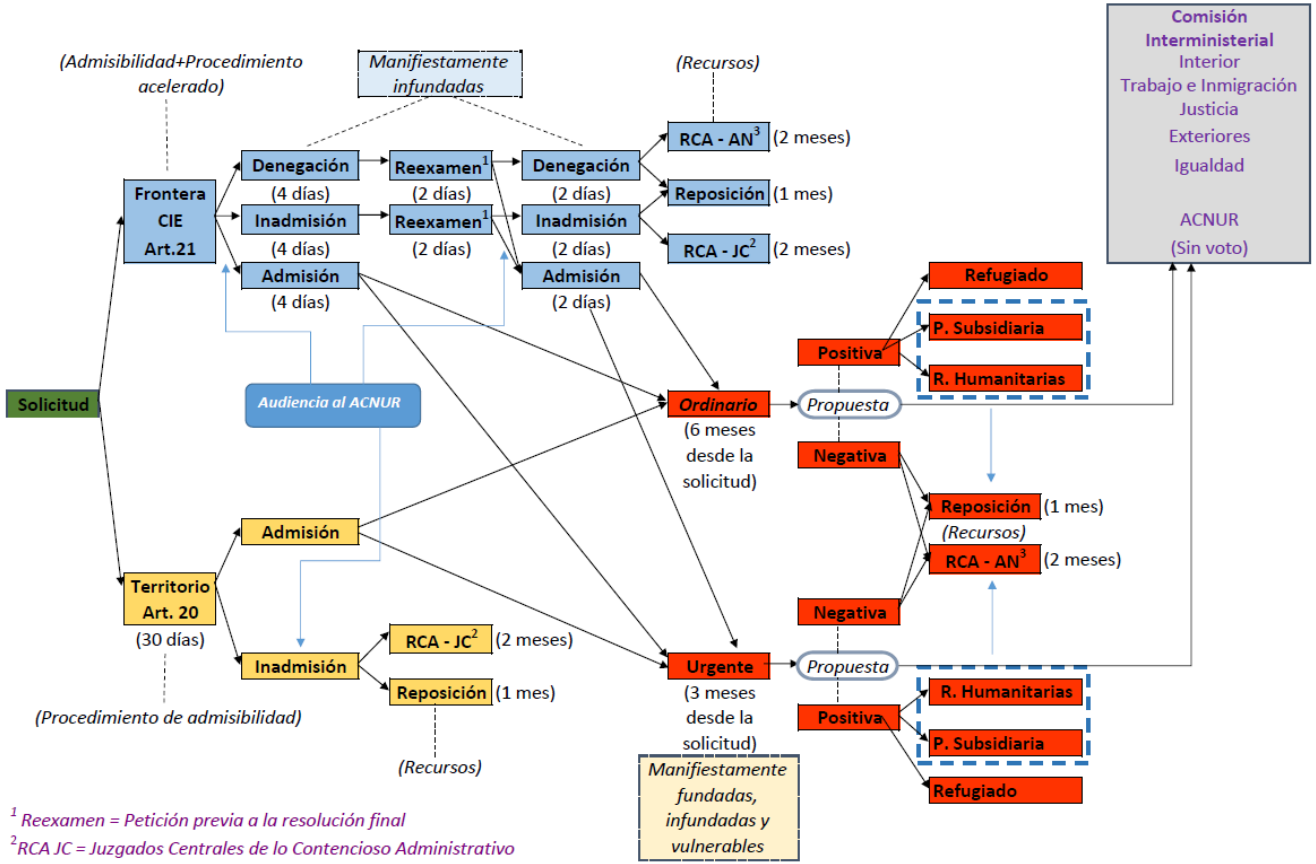
- The applicant may file the international protection claim in the following places:

  (i) Entry points at international border crossings or detention removal centres (CIE)

  (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 will to seek asylum**

Procedimiento de Asilo (Ley 12/2009)



[1] Reexamen = Petición previa a la resolución final

[2] RCA JC = Juzgados Centrales de lo Contencioso Administrativo

[3] RCA AN = Audiencia Nacional

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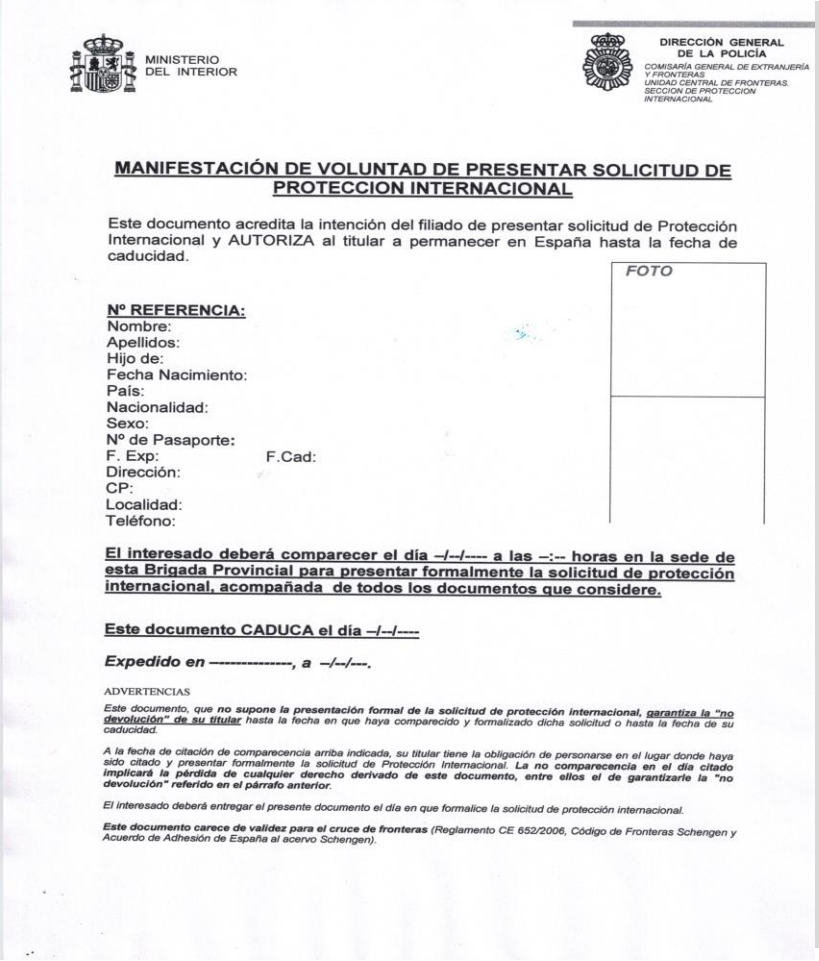
Registration of intention to seek asylum.

- 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



MINISTERIO DEL INTERIOR

DIRECCIÓN GENERAL DE LA POLICÍA
COMISARÍA GENERAL DE EXTRANJERÍA Y FRONTERAS
UNIDAD CENTRAL DE FRONTERAS.
SECCION DE PROTECCION INTERNACIONAL

MANIFESTACIÓN DE VOLUNTAD DE PRESENTAR SOLICITUD DE PROTECCION INTERNACIONAL

Este documento acredita la intención del filiado 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. Exp: F.Cad:
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 acervo Schengen).*

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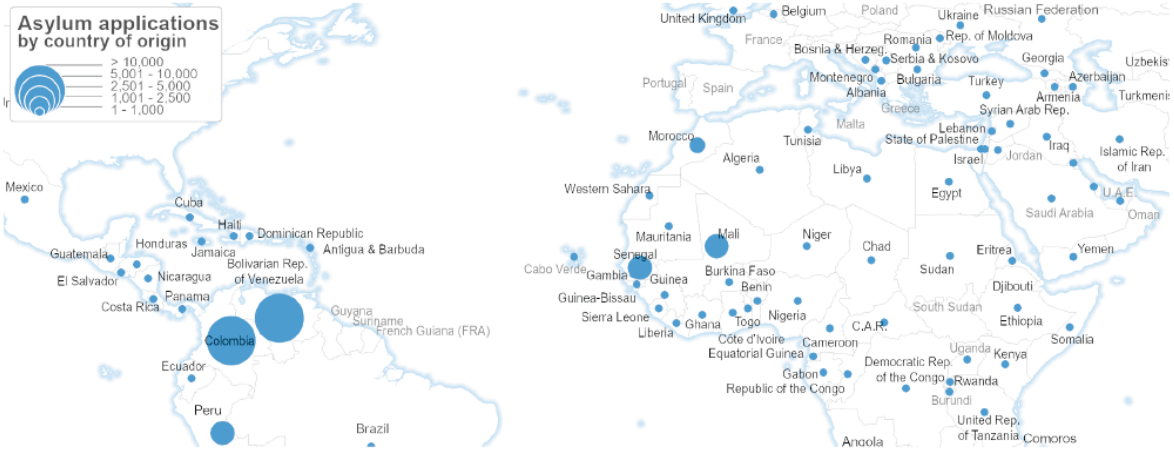
SPAIN ASYLUM APPLICATIONS

1 Jan - 30 Apr 2024

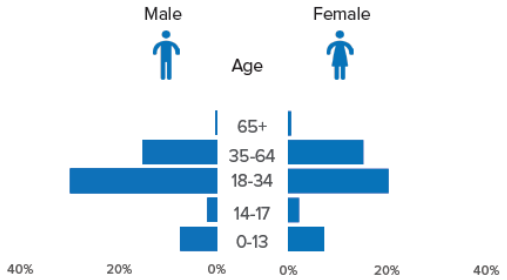


56,792 New asylum app. until 30 Apr 2024 ↗ 7% Dif. 2023

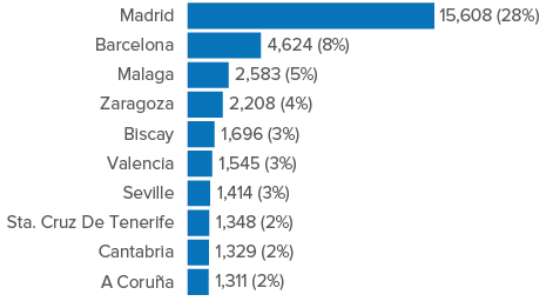
11% Recognition rate
49% Protection rate[1]

238,475 Total Pending app.[2] ↗ 63% Dif. 2023

Percentage of asylum applications by gender and age[2]



Main provinces of asylum applications



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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

The relevance of quality in asylum procedures

- Information provided
- Training of professionals
- Interviewing
- Interpretation
- Contents of decision
- Legal assistance
- Access to effective remedies in law and practice

Good Practices

- Legal information guide for asylum lawyers
- Guides for interpreters in the asylum context
- Training sessions
- Communities of practice / Networks
- Information mechanisms in place for applicants (videos, comics)
- Monitoring visits
- Protection by presence
- ECHR ECJ Jurisprudence database /practice sharing/strategic litigation

Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Daniel Arencibia Borrego

Legal assistance to immigrants and asylum seekers

TRALIM 3 Las Palmas, 12 June 2024

Co-funded the European Union

Pro bono in Spain with other lawyers in leading cases related to migration and human rights. Not a public defender.

- **COLLISION CASE** (Dec. 13th, 2012)**:** Guard Patrol collides patera in Arrecife-Lanzarote. At least 6 dead.
- **TARAJAL CASE** (Febr. 6, 2014): rubber-ball shooting at migrants entering Ceuta-Spain by sea. At least, 14 dead.
- **ARGUINEGUIN CASE** (2020): Illegal detention of thousands of migrants in Arguineguin during COVID situation.

-**Cases of Minors in prison.**
-Human rights violations in the criminal prosecution of suspected **pateras skippers.**
-Legal assistance to unaccompanied foreign minors denouncing **mistreatment in juvenile centers.**
-Legal assistance to **relatives of migrants** missing at sea.

Fuerteventura
Lanzarote
Canary Islands (Spain)
Gran Canaria
Tenerife
El Hierro
Safi
Agadir
Sidi Ifni
Guelmim
Tan-tan
Laayoune
Boujdour
Dakhla
Nouadhibou
Nouakchott
Kayar
Dakar
Spanish SAR zone SOLAS 74

	UNDOCUMENTED PEOPLE ARRIVING TO SPAIN BY SEA				
	TO CANARY ISLANDAS	CANARY ISLANDS PER DAY	REST OF SPAIN	REST OF SPAIN PER DAY	TOTAL
2001	4.105	11	14.412	39	18.517
2002	9.875	27	6.795	19	16.670
2003	9.388	26	9.788	27	19.176
2004	8.426	23	7.249	20	15.675
2005	4.715	13	7.066	19	11.781
2006	31.678	87	7.502	21	39.180
2007	12.478	34	5.579	15	18.057
2008	9.181	25	4.243	12	13.424
2009	2.246	6	5.039	14	7.285
2010	196	1	3.436	9	3.632
2011	340	1	5.103	14	5.443
2012	173	0	3.631	10	3.804
2013	196	1	3.041	8	3.237
2014	296	1	4.256	12	4.552
2015	875	2	4.437	12	5.312
2016	672	2	7.490	21	8.162
2017	418	1	21.685	59	22.103
2018	1.307	4	56.191	154	57.498
2019	2.687	7	23.470	64	26.168
2020	23.271	64	17.083	47	40.106
2021	22.316	61	17.784	49	40.100
2022	15.682	43	13.248	36	28.930
2023	39.910	109	15.708	43	55.618
2024 (may 31)	17.117	113	3.737	25	20.854
TOTAL	217.548	25	267.973	31	485.284

2019	2.687	7	23.470	64	26.168
2020	23.271	64	17.083	47	40.106
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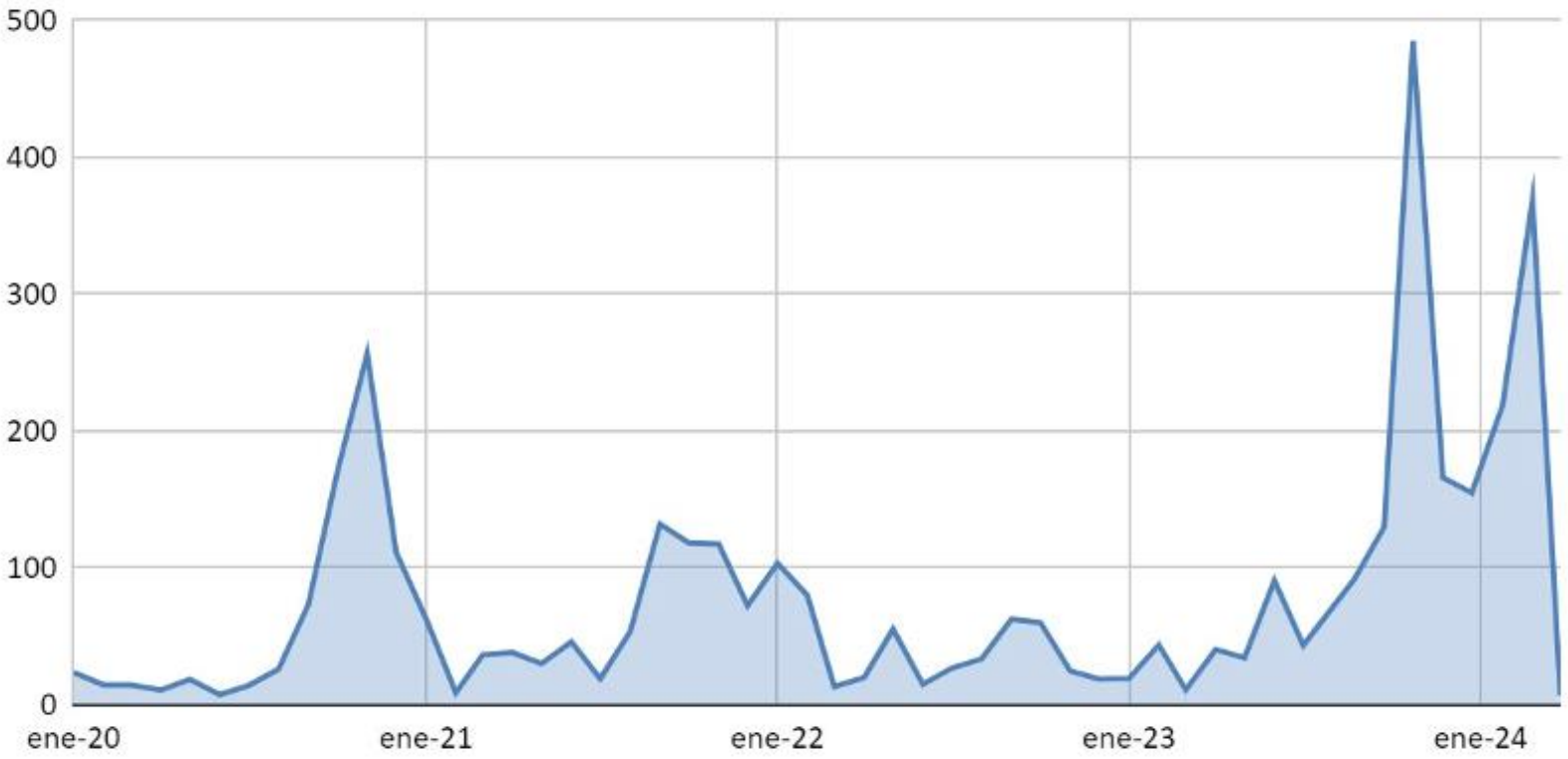


COVID FACTS

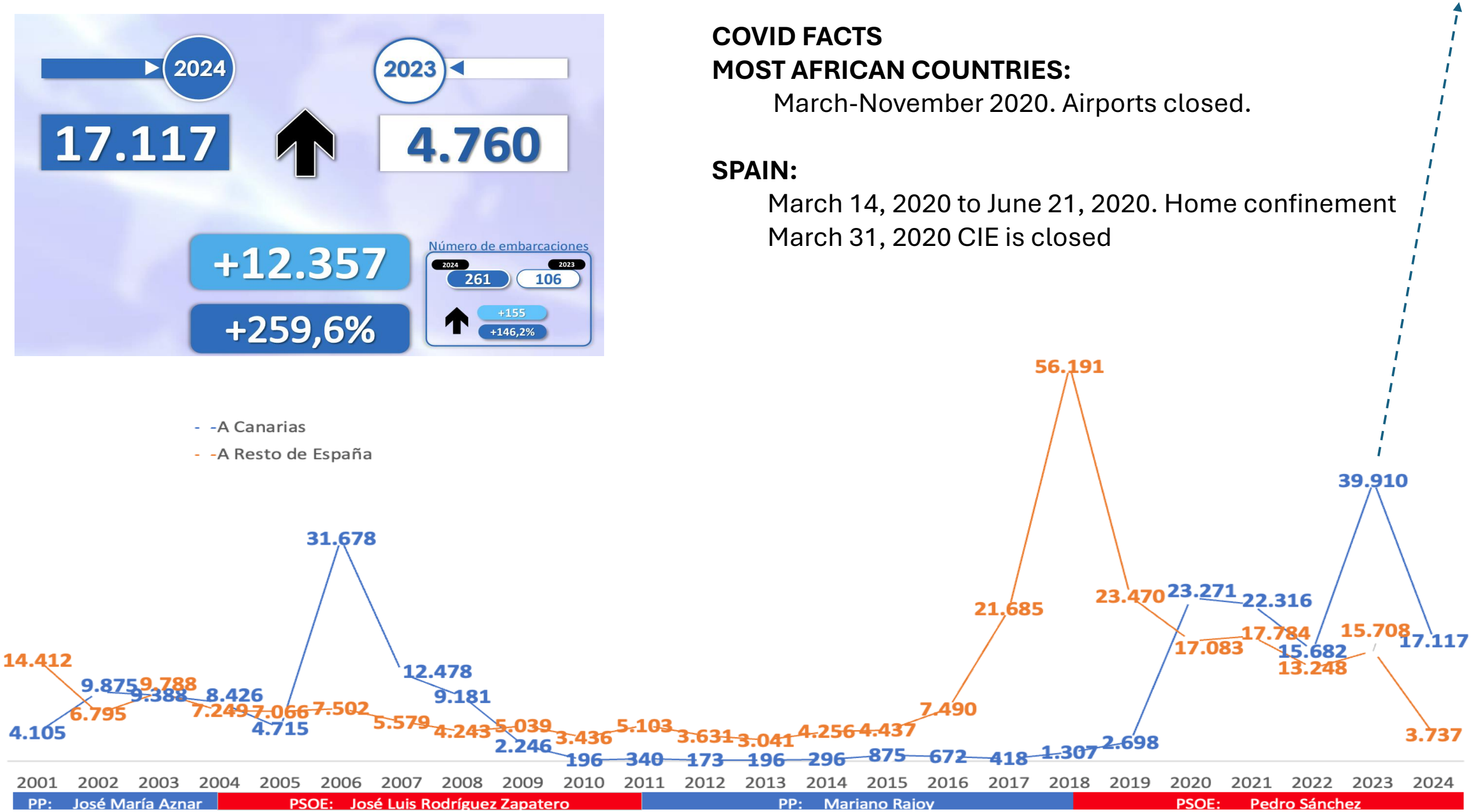
MOST AFRICAN COUNTRIES:

March-November 2020. Airports closed.

SPAIN:

March 14, 2020 to June 21, 2020. Home confinement

March 31, 2020 CIE is closed



Arguineguín. Pop. 5004 inh.

Port of Arguineguin, 2019

July 2020

July 2020

August 2020

September 2020

November 2020

CNP
POLICIA
CIENTIFICA

EL PAÍS

November 11, 2020. The failures of legal assistance to migrants in the Canary Islands or the case of the albino that no one saw.

Legal assistance to new arrivals to the islands does not comply with the guarantees that the law recognizes for new arrivals - "*No one told me that he was albino*," the lawyer who assisted him would later justify.

Last Monday, given the disembarkation of more than 1,600 people over the weekend, a group of public defenders was summoned to the Las Palmas de Gran Canaria police station. They had to assist some of the new arrivals, but their clients were more than 40 kilometers away, crowded on the Arguineguín dock. The majority of the lawyers signed the return orders, which were processed as soon as they arrived, without seeing the faces of their clients or, of course, meeting them. This way of proceeding has been repeated for more than a month, according to the lawyers consulted.

The Las Palmas Bar Association recognizes that it is not guaranteeing adequate legal assistance to migrants, but insists that public defenders are the last link in an overflowing chain.

November 11, 2020

The Immigration Subcommittee denounces the lack of legal assistance for immigrants arriving in the Canary Islands

The Subcommittee on Immigration and International Protection of the General Council of the Legal Profession has denounced the lack of legal assistance to immigrants arriving in the Canary Islands, which, according to lawyers specialized in the Immigration Shift of the islands, has been occurring systematically in recent years. months.

The problem, which especially affects the province of Las Palmas, is that the vast majority of those who have arrived in recent weeks are having an expulsion order issued without any lawyer being able to assist them and without them having even been informed. that he has the right to legal assistance, which is why immigrants' right to defense is being violated.

Red Cross workers help at the Dock to transfer migrants that they have intercepted in Canarian waters, in Gran Canaria.

The Immigration Subcommittee thus joins the complaints of the lawyers of Las Palmas and the Bar Association of the island and demands that in all cases the arriving immigrants have the mandatory legal assistance that informs them of their rights and guides them in everything. the process, as well as the presence of a translator. Therefore, it requires the responsible authorities to provide the necessary means so that a decent and quality service can be provided and with all the health security measures required by the current situation, as corresponds to a rule of law.

Abogacía Española
CONSEJO GENERAL

Resol. 68/2020 Legal Assistance to Migrants Las Palmas de Gran Canaria, November 12, 2020

Ilustre Colegio de Abogados de Las Palmas

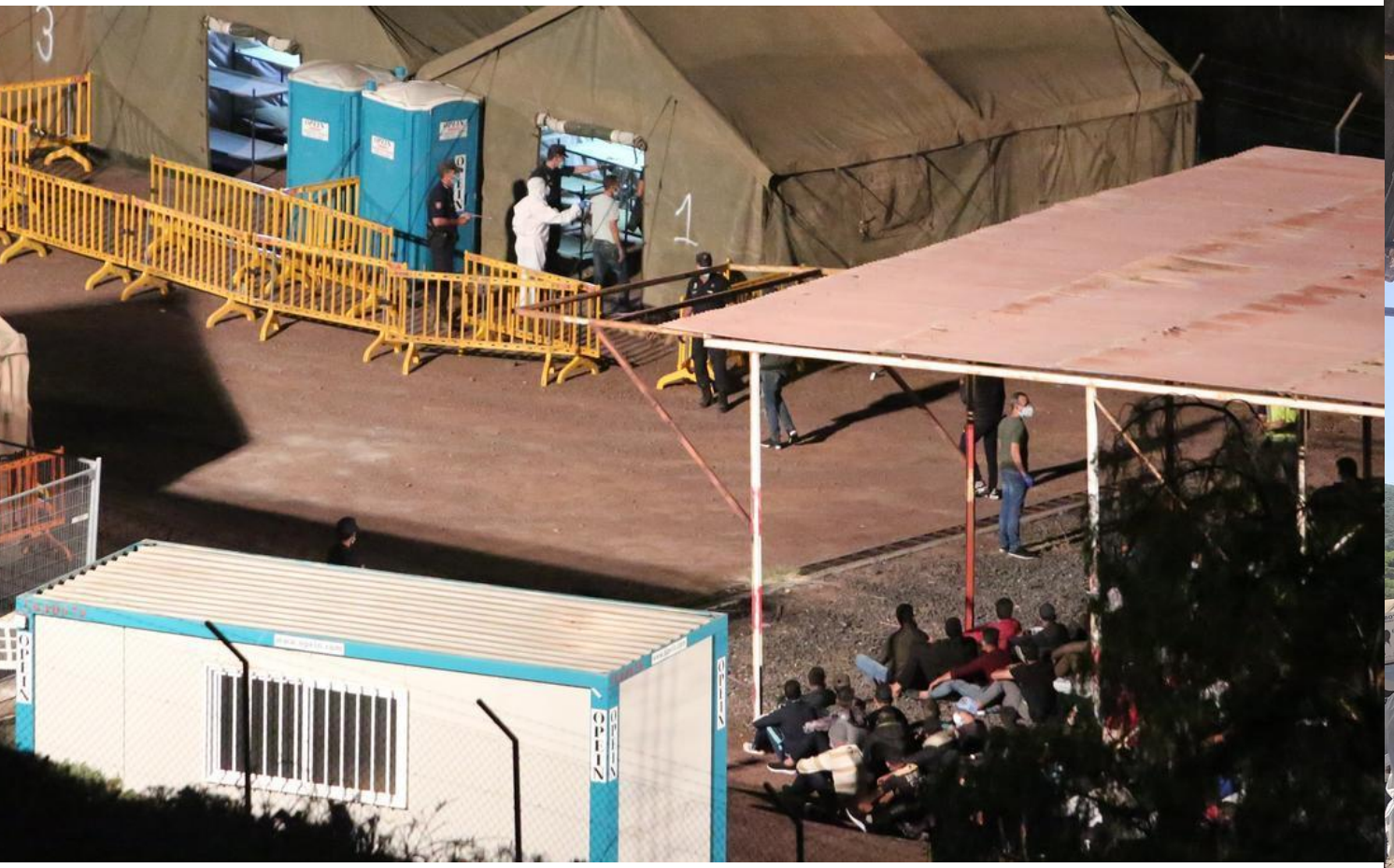
Dear colleagues:

Given the current serious immigration crisis, and given the existing complications in legal assistance, I hereby participate in the following:

That the assistance of migrants both in police and judicial units, arriving in boats or cayucos or by any other means to Spanish territory, must meet the guarantees established by Organic Law 4/2000, of January 11, on rights and freedoms. of foreigners in Spain and their social integration, in its article 22 and following, both in administrative and judicial procedures. Said legal intervention must be accompanied by a **native language interpreter**, and it **must be individual and in person after an interview** with the migrant. All of this in order to guarantee the right to defense and fundamental rights, since it must also be taken into account that among the migrants there could be **minors** or people who could have the right to **international protection** due to having well-founded fears of being persecuted for reasons of race, religion, nationality, membership in a certain social group or political opinions, which means that adequate legal assistance is essential to protect your rights.It is an obligation of the authorities to be able to guarantee our colleagues legal assistance to migrants, so that when communicating any type of administrative act, referring to their expulsion, they can **meet in advance with their lawyer, assisted by a translator**.

Therefore, we urge our members, that in the event that assistance both at the police station and in judicial offices does not meet the requirements contained in the Law, they proceed to demand that they be carried out legally, **leaving a written record of the regulatory non-compliance**.In the specific case of not being able to meet personally and previously with your clients, before signing the expulsion order, it is our obligation to refuse to sign said document, because we are violating the rights of your client to legal assistance.The College is carrying out whatever steps are necessary, so that legal assistance can be carried out with all the guarantees for both migrants and our colleagues.

December 2020



December 2020

December 2021

June 2024

POLICIA
NACIONAL

Collective assistance

The coordinator of the immigration service of the Las Palmas Bar Association, Kabir Vaswani, reveals that until mid-November, lawyers had problems accessing the premises for security reasons and many were forced to sign the police reports at the police station, without even knowing their clients. Now, after several complaints to the Ombudsman, the authorities allow on-site interventions, but there is no place set up for this purpose. "We have no choice but to serve users in groups and in the middle of the breakwater," he says.

Two interpreters for 400 people

Obviously, it is also very important that, during the interview, the interested party can communicate fluently with his lawyer. Another minimum requirement that fails in Arguineguín given the shortage of translators. "There have been occasions when we have only had two interpreters to attend to 400 people," laments Agustín Guillermo Santana, in charge of the public defender's office of the Las Palmas Bar Association.

Loss of contact

This is a complaint shared by Leticia Rodriguez, who has intervened in several procedures of this type in Lanzarote. The lawyer stresses that public defenders, apart from providing initial assistance, have the duty to help their clients to carry out other procedures, such as requesting a residence permit or filing an asylum application, if they so wish. But, many times, it is not possible because they lose track of them when they are transferred to a detention center for foreigners (CIE) or continue their journey to Europe.

Published in CINCO DÍAS on November 30, 2020

Nearly a thousand minors who arrived in a cayuco to the Canary Islands have ended up in centers for adults

They denounce that Spain "irregularly" deported 130 possible refugees to Mali

The Ombudsman: "several people reported not having been informed of the possibility of requesting asylum"

"We are imprisoning children": two young migrants have been in prison for more than a month waiting for age tests to be released

Two Senegalese men who claim to be 15 and 17 years old remain in prison accused of skippering a boat. One of them has been waiting for a month for evidence to get out of there, for a crime that he claims he did not commit.

Nearly 200 migrants exceed the legal limit of 72 hours in the police camp that replaces Arguineguín

Migration on the Canary Islands

https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2021/04/INFORME_Canarias-EN.pdf

DEFENSOR DEL PUEBLO
Spanish Ombudsman

Collective reading of rights and legal counsel continue to be observed during visits. The thousands of individuals who, over the course of several months, passed through Arguineguín dock were not given legal counsel with minimum guarantees. This was because the legal representatives were not permitted access to the facilities for several months and, once they were given access, there was a lack of suitable space to provide personalised assistance. It was noted that sometimes, when they were unable to hold a private conversation with clients with the help of an interpreter, legal representative simply limited their work to signing the return ruling.

The total absence of international protection requests made by unaccompanied alien minors on the Canary Islands once again highlights the need to remove the barriers they face when accessing the international protection procedure. Four related issues are repeatedly detected by the Ombudsman's Office. There is a total absence of specific residential resources that have been adapted to suit the needs of minors who require international protection. Autonomous community entities for the protection of minors repeatedly admit this. In the Ombudsman's opinion, the necessary steps so that resources of this kind can be made available must be taken without delay.

Restrictions on freedom of movement for asylum seekers in Ceuta and Melilla, and now on the Canary Islands, have been the subject of recurrent complaints filed at the Ombudsman's Office for many years. Asylum seekers have the fundamental right to freedom of movement around Spain. They may also live in any part of Spain but must inform government agencies of their address.

PART ONE. LEGAL ASSISTANCE TO PASSENGERS.

1. DETENTION ON ARRIVAL: up to72 HOURS
   Individual interview. Assistance in police premises.
2. DEVOLUTION ORDER.
   Administrative Appeal.
   Urgent precautionary suspension by Courts.
   Contentious Administrative appeal and forward.
3. DETENTION FOR REMOVAL: up to 60 DAYS
   Legal Assistance in Court and Foreigners Detention Center.
   Appeal and forward.
4. INTERNATIONAL PROTECTION FOR REFUGEES.
   Assistance in application and interview.
   Second exam, appeal and forward.
5. NATIONAL PROTECTION.
   AGE, GENDER, ILLNESS.

ONE LEGAL ASSSISTANCE PER 6 MIGRANTS ARRIVING BY SEA

Legal Fees are approved by ORDER of May 17, 2019, approving the modules and bases for financial compensation for free legal aid services for legal professionals and attorneys. A Resolution on May 12th, 2023 clarifies that the lawyer receives a one shot fee of 314 EUR for assisting each pack up to 6 migrants (52,33 per each one). The obligations for the lawyer are:

LEGAL ASSISTANCE at Police station or the Foreigner's Brigade, Court, Foreigners Detention Center or similar, request for **INTERNATIONAL PROTECTION/ASYLUM**, appeals and contentious-administrative appeals against the **EXPULSION ORDER** and the appeals for reform and appeal against the **INTERNMENT ORDER**.

314 EUR PER SIX: 52.33 EUR PER PERSON.

THE FIRS LEGAL ASSISTANCE.

Frontex has “voluntary interviews” before legal assistance.
3 hours to the lawyer to arrive.
Name spelling verification
Maximum police detention: 72 hours (17.2 CE)..... up to 24 days.
Right to dignity
Right to phone..... No phone available.
Right to privacy, individual interview..... “You are a problema maker”.
Right to translator..... Lack of translators.
Identify vulnerable groups: Children, Pregnant Women, Women Trafficking, Gender Violence, International Protection, Sickness.
Right of movement: Inform about next steps in migration route.

Need of multilingual tools for legal assistance focused on personal situations.

0000. CONDITIONS IN THE LEGAL ASSISTANCE.	
0100. PLACE OF INTERVIEW WITH LAWYER.	
0200. DATE AND HOUR.	
0300. TIME ELAPSED SINCE ARRIVAL (72 hours).	
0400. NATIVE LANGUAGE.	
0401. Moroccan Arab	
0402. Arab	
0403. Bambara	
0404. Poular	
0405. Soninké	
0406. Malenké	
0407. Mandinga	
0409. French	
0410. English	
0411. OTHER.	
0500. TRANSLATOR.	
0600. VALID TRANSLATION.	
0700. DURATION OF THE INTERVIEW	
0800. PREVIOUS INTERROGATORIES WITHOUT LEGAL ASSISTANCE	
0810. FRONTEX.	
0820. POLICÍA NACIONAL.	

1000. HEALTH & ANATOMICAL CONDITIONS	
1100. NEEDS MEDICAL ASSISTANCE.	
1110. Needs urgent medical assistance.	
1120. Needs medical assistance within 72 hours.	
1130. Needs medcial assistance within one week.	
1200. SERIOUS DISEASE	
1300. CHRONICAL DISEASE.	
1400. CONTAGIOUS DISEASE (i.e. Covid)	
1500. NEEDS MEDICATION.	
1520. Needs urgent medication.	
1530. Needs medication within 72 hours.	
1540. Needs medication within one week.	
1600. SERIOUS DISABILITY.	
1610. Needs asistance because disability.	
1700. ALLERGIES	
1710. Food allergies.	
1720. Other relevant allergies.	

2000. PERSONAL DETAILS AND BELONGINGS.

- 2100. MISTAKES IN POLICE DOCUMENTATION.
  - 2110. Incorrect name.
  - 2120. Incorrect Nationality.
  - 2130. Incorrect date of birth.
  - 2131. Unknown date of birth.
  - 2140. Incorrect name of parents.
  - 2150. Incorrect place of arrival
- 2200. OWN IDENTITIY DOCUMENTATION.
  - 2210. Passport.
    - 2211. Has the original Passport.
    - 2212. Has simple photocopy of the Passport.
    - 2213. May have the original Passport.
  - 2220. National ID.
    - 2221. Has the original national ID.
    - 2222. Has simple photocopy of the national ID.
    - 2223. May have the original national ID.
  - 2230. Deed of birth.
    - 2221. Has the original deed of birth.
    - 2222. Has simple photocopy of the deed of birth.
    - 2223. May have the original deed of birth.
- 2300. BELONGINGS RETAINED BY POLICE
  - 2310. Documents retained by Police.
  - 2320. Mobile Phone retained by Police.
  - 2330. Money retained by Police.

3000. POSSIBLE UNDER AGE

- 3100. OBVIOUS MINOR.
  - 3100. Unacompannied obvious minor.
  - 3200. Present adult of reference.
- 3200. UNDER 16 YEARS
- 3300. UNDER 18 YEARS.
- 3400. BOTH PARENTS ARE DECEASED.
- 3500. ADULTS IN EUROPE THAT COULD TAKE CARE THE MINOR.
  - 3510. With contact details
  - 3520. Without contact details.

4000. WOMEN.

- 4100. PREGNAT WOMAN.
- 4200. VICTIM OF TRAFIC OF WOMEN.
- 4300. VICTIM OF VIOLENCE AGAINST WOMEN.

5000. FAMILIY.

- 5100. FAMILY IN THE SAME BOAT
- 5200. FAMILY IN CANARY ISLANDS
- 5300. FAMILY IN SPAIN
- 5400. FAMILY IN OTHER EUROPEAN UNION COUNTRY

6000. DEVOLUTION ORDER.

7000. DETENTION FOR ILLEGAL ARRIVAL.

8000. TRAVEL & RELEVANT FACTS FOR PENAL REVIEW.

9000. INTERNATIONAL PROTECTION.

9100. SERIOUS RISK IN CASE OF RETURN TO THE OWN COUNTRY
- (REFUGEE STATUS APLICATION)
- 9110. Persecution for race
- 9120. Persecution for religion.
- 9130. Persecution for nationality.
- 9140. Persecution for political opinions.
- 9150. Persecution for membership of a particular social group.
  - 9151. Talibe child escaping from a Coranic School (Daara) in Senegal
  - 9152. Albino (white skin).
- 9160. Persecution for gender.
- 9170. Persecution for sexual orientation.

9200. RISK OF SUFFERING SERIOUS HARM IF RETURNED.
- (SUBSIDIARY PROTECTION)
- 9210. Risk of death penalty.
- 9220. Risk of torture.
- 9230. Risk of degrading treatment.
  - 9231. Risk of forced marriage.
  - 9232. Risk of genital mutilation.
  - 9233. Risk of sexual violence.
  - 9234. Risk of slavery.
- 9240. Serious threats to life or integrity for war or conflict.

9300. HUMANITARIAN PROTECTION.
- 9310. Serious illness requires specialised health care not accesible in his/her country.
- 9320. Return to his country implies danger for safety of the applicant or his/her family.

9400. APPOINTMENT TO APPLY FOR PROTECTION.

PART TWO. WHAT CAN WE DO TO IMPROVE LEGAL ASSISTANCE?

1.- Use facilities to guarantee individual interviews.

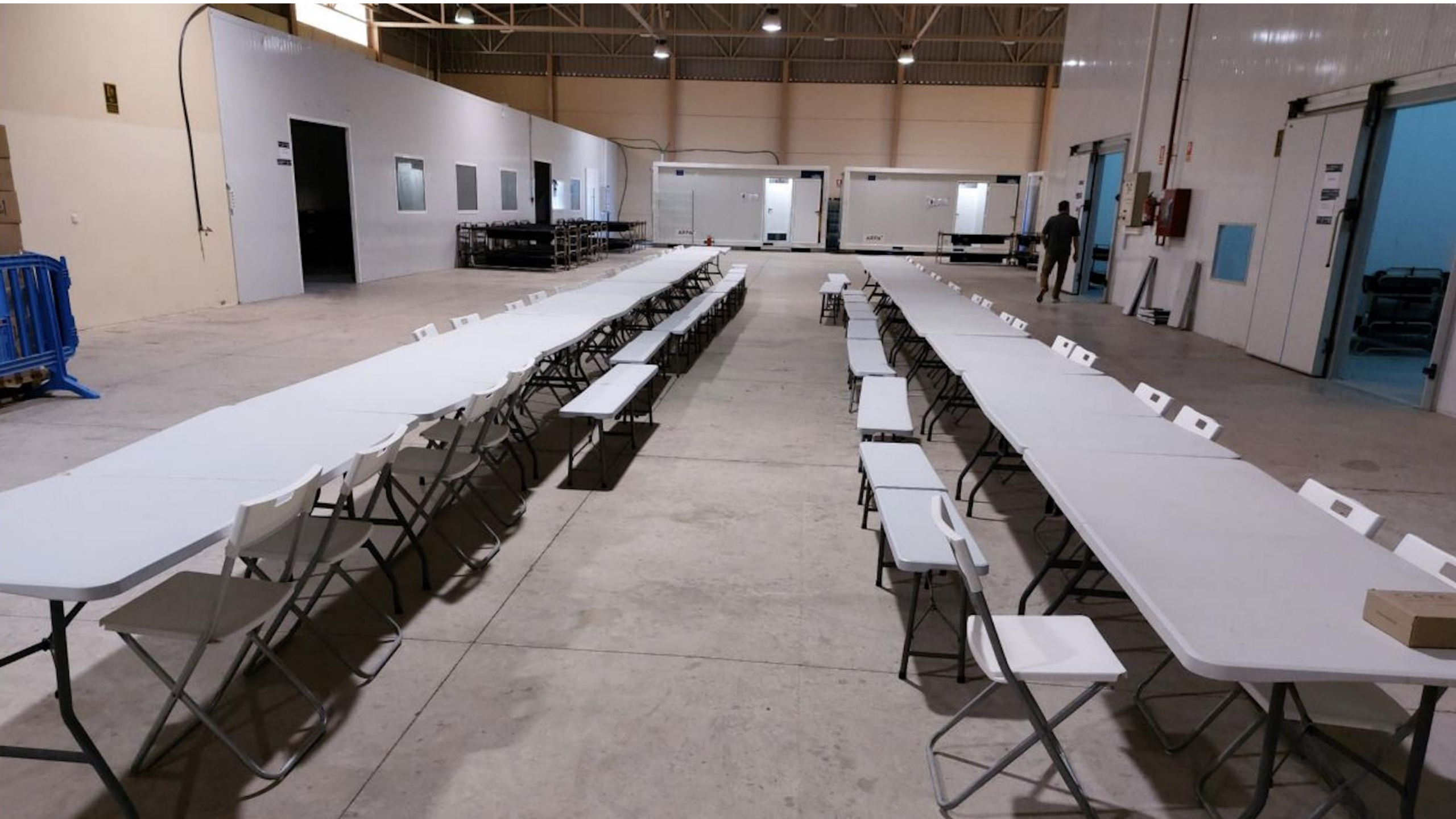
2.- Tools (multilingual checklists and videos) to bypass lack of translators and mechanise minimum assistance.

3.- Tools for beginners: templates, collections of jurisprudence.

4.- One process, one fee.

Budget is not distributed efficiently. Simply signing the return ruling is overpaid. Complex legal assistance is underpaid.

5.- Reduce rotation of lawyers to specialize them.



PART THREE. THE SKIPPERS.

PROSECUTION AND PRISON.

Article 318 bis. Offences against the rights of foreign nationals

1. Anyone who intentionally **assists** a person who is not a national of a Member State of the European Union **to enter** Spanish territory or to transit through Spanish territory in a manner that violates the legislation on the entry or transit of foreigners shall be punished by a fine of three to twelve months or **imprisonment of three months to one year**. The acts shall not be punishable when the objective pursued by the perpetrator was solely to provide humanitarian aid to the person concerned.If the acts were committed for financial gain, the penalty shall be imposed in the upper half of the sentence.

2. *(Help for money to stay in Spain)*

3. The acts referred to in paragraph 1 of this article shall be punishable by a **prison sentence of four to eight years** when any of the following circumstances apply:

a) When the acts have been committed **within an organisation** engaged in such activities. In the case of the heads, administrators or managers of such organisations or associations, the penalty shall be applied to the upper half of the sentence (**six to eight years**), which may be increased to the next higher degree.

b) When the **lives of the persons** who are the object of the offence have been **endangered**, or the danger of causing serious injury has been created.

4. *(Public employees or Authorities)*

5. *(Legal Entities)*

6. The courts, taking into account the seriousness of the act and its circumstances, **the conditions of the offender and the aim pursued** by the offender, **MAY** impose a penalty **one degree lower** than the penalty respectively indicated.

Criminal Code. Article 318 bis. Smuggling.

GENERAL. 0,25 to 3 years. Not risk for lifes. Not Criminal Organisation.

AGGRAVATED. 4 to 8 years.

- 4 to 8 years. Risk for lifes.
- 6 to 8 years. Criminal Organisation.

ATENUATED. 2-4 years. Potestative Atenuation.

- Families, own migration…

1.-Arrival. Up to 72 hours of detention without judicial control.

Voluntary interviews by FRONTEX. (without Lawyers).

Delivery of devolution orders.

2.-Transfer to humanitarian camps.

Voluntary interviews by National Police.

Cooperation with pólice to identify offenders?... Permit to stay and work.

3.-Detention and visit to Courts.

Witness protection.

Pre-constituted evidence. Video recording of declarations with lawyers.

Provisional Prison.

4.-Six months later.

Negotiation with Public Prosecutor: 3 years if facts and term prison are admitted.

In case of agreement: 3 years of prison.

If no agreement: Prosecutor requests 8 years. And you dont have witnesses!!!

SUMMARY APPLICATION OF Art. 318 bis CRIMINAL CODE since January 1, 2022

Last published	Province	Boats	People	Prev. (Days)	Accused	Agreed	Not agreed	%Agreed	Abs.	Cond.	Resol	2nd Instance	Supreme Court
13-6-23	LAS PALMAS	50	2025	173	98	88	10	90%	5	93	54	4	1
29-6-23	TENERIFE	12	714	140	41	16	25	39%	13	28	13	3	
19-2-24	BALEARES	25	404	196	33	24	9	73%	4	29	27	3	
11-12-23	ALMERIA	77	1096	218	121	50	71	41%	5	116	77	35	
7-2-24	CEUTA	24	229	170	60	26	34	43%	4	56	25	1	
19-2-24	MURCIA	96	1242	123	148	146	2	99%	1	147	101		
		284	5710	169	**501**	350	151	70%	32	469	297	46	1

Boats.: Number of boats

People.: People in the boats

Prev.: Days from detention to judgement

Acus.: Number of accused

Agreed: Number of Accused admitting the facts an punishment

No Agreed.: Number of Accused NOT admitting facts and punishment

% Agreed: Percentage admitting facts and punishment

Abs: Absolved in first trial

Cond.: Condemned in first trial

Resol: Number of resolutions in first trial

2nd instance: Trial first review

Supreme Court: Review in the Supreme Court

Migrant Smuggling from the Northwest African coast to the Canary Islands

UNODC Observatory on Smuggling of Migrants | First Edition - July 2022

5. **Counter-smuggling investigations and prosecutions on the Canaries focus on boat drivers, who navigate the boat in return for a free or discounted passage, and are rarely members of transnational criminal organizations.** The drivers are often in a position of vulnerability and may be victims of trafficking for forced criminal activities.

6. **Most investigations and prosecutions do not target the crime groups on the Northwest African coast that organize smuggling of migrants along this route and profit from the crime.**

Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Liam Thornton

Legal framework on asylum and immigration in Ireland

TRALIM 3 Las Palmas, 12 June 2024

Co-funded the European Union

Overview of Contribution

Part I: Legal Frameworks for Irish Asylum and Immigration Law – impact of European Union Law

Case Study A- Part II: Material Reception Conditions & Francovich Damages

Case Study B - Part III: ‘Safe third country’ requirement

Training of Lawyers on EU Law relating to Asylum and Immigration 3

#TRALIM3

Part I: Legal Frameworks for Asylum and Immigration Law in Ireland

Dr Liam Thornton

Associate Professor, School of Law, University College Dublin, Ireland

Las Palmas de Gran Canaria – 12 June 2024

Co-funded the European Union

Finlay Geoghegan J. in *Bode* [54]

"[Ireland], as a sovereign state has an **inherent power to control aliens** both in relation to their entry to the State and whilst resident in the State. It is in the **interests of the common good** of a state that it should have control of the entry of aliens, their departure and their activities and duration and stay within the state. This **inherent power of the State** is longstanding and **predates the present Constitution**. The current constitutional source of the power, in common with all executive powers, is now to be found in Article 6.1 of the Constitution."

Immigration and Law in Ireland

"**Central to nationhood** is the ability to control borders…control over immigration constitutes a fundamental right of the State and thereby warrants an aspect of the separate power of government recognised in both domestic and international law…"

A & B v IPAT [2022] IESC 35 at [9] (emphasis added).

Sources of Asylum and Immigration Law in Ireland

- Immigration Acts
- Employment Law legislation
- **International Protection Act 2015** (and accompanying statutory instruments)
- Criminal law
- Trafficking
- Social Welfare Law

European Union Law- The Irish 'Opt-In'

Article 29.4.6 of the Irish Constitution

Asylum & Immigration Matters- Protocol 21 of the Treaty on the Functioning of the European Union

Visas and Border Control: Protocol 19 TFEU

See: European Migration Network (2023) here

EU Immigration Directives/Regulations

- **Regular third country migrants**
  - Scientific Research Directive
  - Facilitation Directive

- **Borders , Visas & Trafficking**
  - Ireland not in Schengen system, but does have access to Schengen data-bases
  - Anti-Trafficking Directive.

Irish immigration law only minimally engaged with EU immigration law. Legal obligations mainly emerge from Irish law.

EU Asylum Law and Irish Asylum Law

Domestic law: International Protection Act 2015

Ireland has opted into:

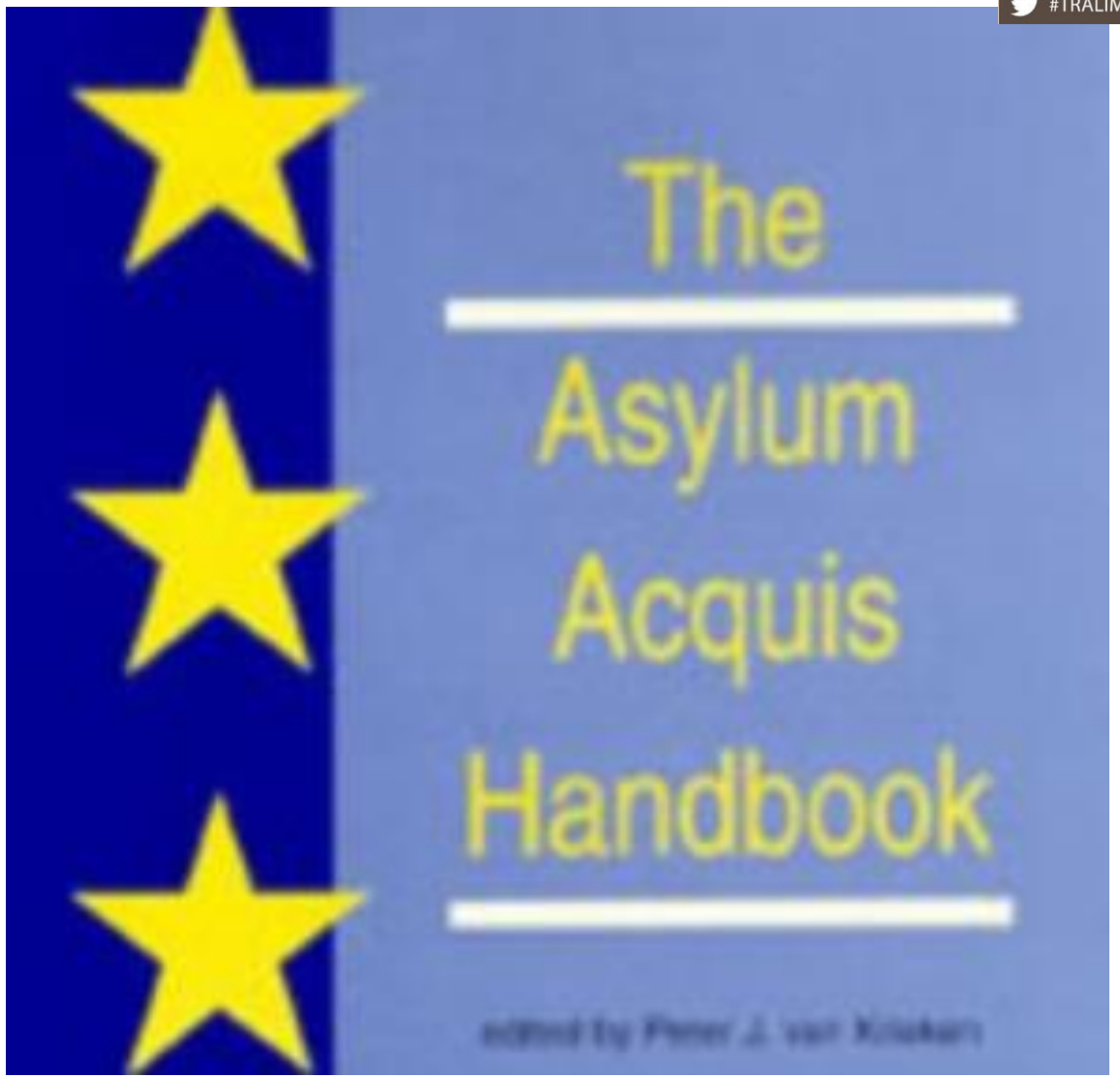
- Eurodac, European Union Asylum Agency & Dublin III Regulations.
- Procedures (2005) & Qualification(2004) Directives. Temporary Protection Directive (2002) and Reception Directive (recast) 2013- Ireland opted into the Reception Recast Directive in 2018

Ireland **has not exercised its opt-in** to:

Asylum Procedures Directive (recast)

Qualification Directive (recast)

However, Irish law must be interpreted considering Recast Directives, see e.g. K.R.S. [CJEU, 60] and A & B [IRL, 124-131]



Irish law in light of Recast Directives

- In places the International Protection Act 2015 adopted provisions akin to elements of Recast Qualification & Procedures Directives without being obliged to do so.
  - Definition of applicant.
  - Duty to Co-Operate
  - Safe third country concept etc.
- While Ireland has not exercised opt-in to Recast Qualification and Procedures Directives- duty of harmonious interpretation.

Training of Lawyers on EU Law relating to Asylum and Immigration 3

#TRALIM3

Part II: Material Reception Conditions & Francovich Damages

Dr Liam Thornton

Associate Professor, School of Law, University College Dublin, Ireland

Las Palmas de Gran Canaria – 12 June 2024

Co-funded the European Union

The legislative measures

EU Reception Conditions Directive (2013)

Transposed into Irish law by the

European Communities (Reception Regulations) 2018 (as amended)

L 180/96 EN Official Journal of the European Union 29.6.2013

DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

laying down standards for the reception of applicants for international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(f) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ([4]). In the interests of clarity, that Directive should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement*. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

(4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council.

(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

(6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to

STATUTORY INSTRUMENTS.

S.I. No. 230 of 2018

EUROPEAN COMMUNITIES (RECEPTION CONDITIONS) REGULATIONS 2018

Article 2 & 17 of the Reception Directive

While awaiting a decision on an international protection claim, an international protection applicant is entitled to ‘material reception conditions’ (Reception Conditions Directive 2013 and **Reg. 2** of the European Communities (Reception Conditions) **Regulations 2018** (as amended).

What are ‘material reception conditions’- see **Reg. 2** of the 2018 Regulations.

STATUTORY INSTRUMENTS.

S.I. No. 230 of 2018

EUROPEAN COMMUNITIES (RECEPTION CONDITIONS) REGULATIONS 2018

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(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the Geneva Convention), thus affirming the principle of non-refoulement. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

(4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council.

(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

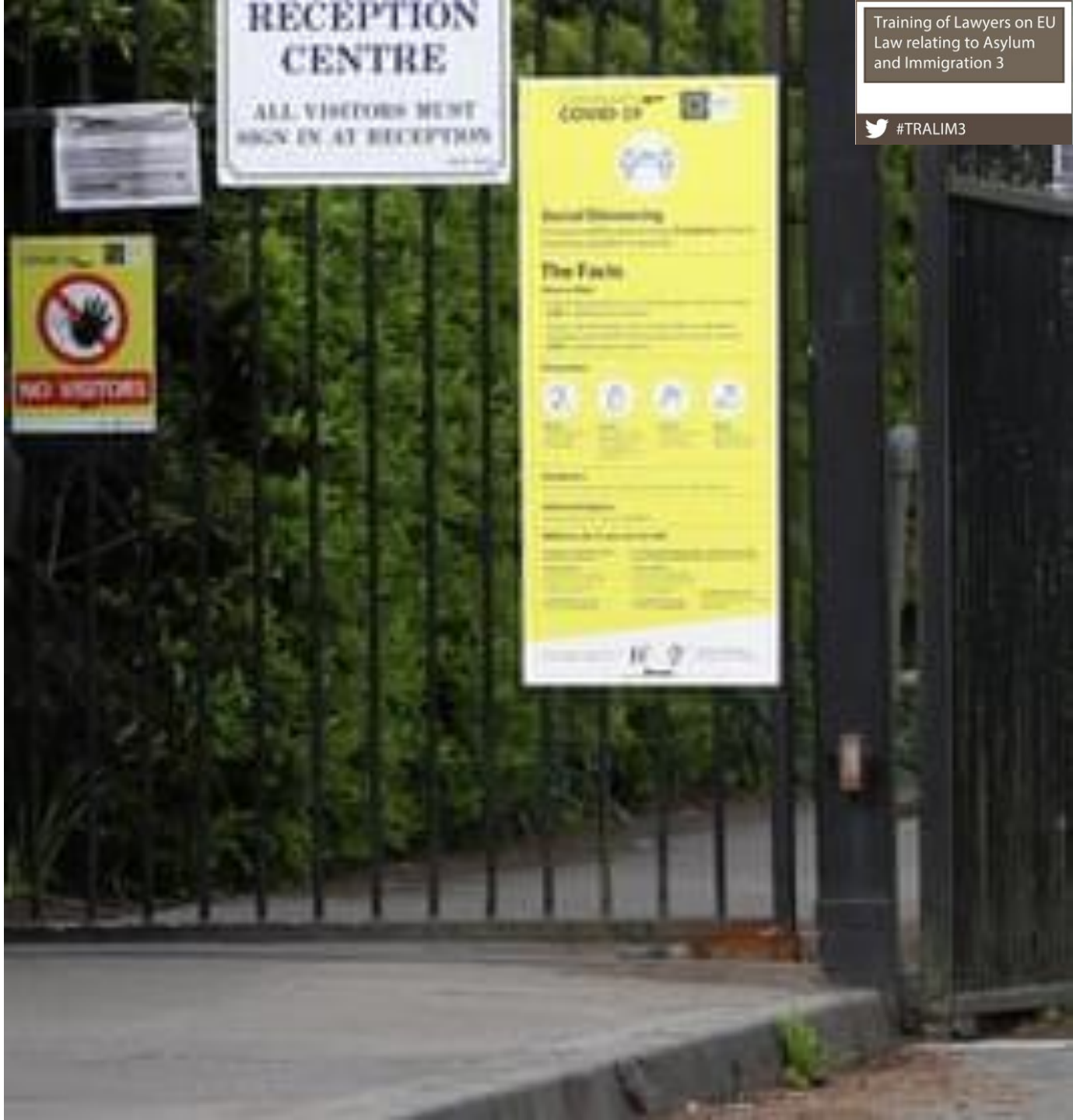
(6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of

Accommodation/Shelter as a ‘material reception condition’

Minister for Children **shall** (firm legal obligation) provide material reception conditions to an international protection applicant (**Reg. 4** of the 2018 Regs).

Reg 4: Requirement to provide accommodation/shelter, including if accommodation centres at capacity, alternative material conditions **must be** provided: a requirement to meet basic needs and be for shortest.

What occurs if, in spite of significant efforts by the Minister, accommodation is not available, so not offered to an international protection applicant?



Government u-turns on housing male asylum seekers in Carlow in favour of families

A major protest had been planned for outside the building on Wednesday evening

Capuchin Friary building, shown via a red line, on Dublin St in Co Carlow. Picture: MyHome.ie

WED, 10 JAN, 2024 - 17:10

CIARA PHELAN, SENIOR CORRESPONDENT

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Refugees

This article is more than 1 month old

Ireland offering asylum seekers tents amid acute housing shortage

New arrivals also given sleeping bags and extra money as they face prospect of sleeping rough

Rory Carroll *Ireland correspondent*

Advertisement

Social Affairs

Almost 300 asylum seekers left without accommodation due to 'severe shortage' of beds

The Department of Integration said it was not able to accommodate all international protection applicants despite 'intensive efforts' to source emergency housing

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Ireland brush Ukraine aside to stay on course for Paris qualification

The Context

Male international protection applicants will not be offered accommodation due to lack of availability

Ireland in breach of EU RCD & Irish Law *S.Y. (a child) v Minister for Children* [2023] IEHC 187

Child, under 18 (however State initially assessed him as being over 18)

Provided with shelter after legal proceedings commenced.

Many other legal challenges commenced and this was the 'lead case'

Accommodation exhausted, S.Y provided with €30 voucher and a list of homelessness charities who *might* help him

The High Court Decision:

Minister for Children stated that he accepted a breach of Irish and EU Reception law, so no need for a court declaration.

Judge Meenan at para. 40:

“There is nothing academic or theoretical about the rights which the applicant seeks to enforce. Being denied “material reception conditions” has a direct impact on the applicant’s quality of life to the extent that it deprives him of the most basic standard of living.”

Legal rationale for granting declaration of State breach of Irish/EU Law

EU/Irish law imposes mandatory obligation on State to provide shelter, regardless of difficulties the State may face [paras **30(ii) and (ii) and 46].**

S.Y was humiliated by lack of food, hygiene and lacking accommodation which the State was **legally obliged** to provide pursuant to Art. 1 EUCFR [paras **30[i], [iv], [v])**].

Referral to a charity does not meet Ireland's domestic/EU legal obligations and was 'completely unacceptable' relying on Case C-79/30 *Saciri*

Judge Meenan at para 46

"It is clear from these decisions of the ECJ on the Directive and its predecessor that even if accommodation facilities are overloaded alternative steps should be taken by the Minister which may include giving 'financial allowances' or referring persons, such as the applicant, to 'bodies within the general public assistance system' who will provide what the Minister does not."

- Declaration that S.Y's rights to materal reception conditions under the Reception Directive and Irish law granted.
- Declaration that Ireland had breached S.Y.'s rights under the EU Charter of Fundamental Rights, the right to dignity (Art. 1).

In spite of this decision, the issue has worsened and as of 07 June 2024, almost 2,000 male international protection applicants without an offer of accommodation.

i. If offered accommodation, daily expenses allowance would be €38.80 per week.

ii. Where not offered accommodation, daily expenses allowance is €113.80 per week

See also, *I.K.A v Minister for Children* [2023] IEHC 238.

Coimisiún na hÉireann um Chearta an Duine agus Comhionannas

Irish Human Rights and Equality Commission

May 2024: Irish Human Rights and Equality Commission

Exercising its power to take a public interest case (first time it has done so).

Seeking declarations that continued failure to provide shelter for male international protection applicants:

i. Breaches EU and Irish Law (Reception Conditions Directive/Irish Regulations)

ii. Breaches EU Charter of Fundamental Rights (Dignity-inhuman and degrading treatment)

iii. Requests the court grant a mandatory order, directing the Irish Government to provide accommodation.

Awaiting judgment from the High Court

Francovich Damages & Conditions

State has breached an EU legal right **AND**

(1) the rule infringed was intended to confer rights on individuals; **AND**

(2) the breach was sufficiently serious; **AND**

(3) there was a direct causal link between the breach of the legal obligation and damage caused to the injured party.

Damages for breach of EU legal rights (Francovich damages)

X & Y (No. 2): **2019** Award of 'Francovich damages': "…having due regard also to the principle of effectiveness (and so the need to ensure that a sanction for infringement of EU law is such as to guarantee real and effective legal protection and have a deterrent effect), the court will award a total of €1,500 jointly to the applicants by way of damages."

L.K. **2023** Incorrect transposition of entitlement to access the labour market resulting in L.K. not having access to labour market for a nine month period. Damages of over €21,000

Entitlement to Damages for Breach of Right to Material Reception Conditions?

S.A. and R.A v Minister for Children [2023] IEHC 717: Is the State liable in damages for breach of international protection applicants' right to material reception conditions?

State made an argument of *force majeure*

Judge Heslin, made preliminary reference to CJEU [119]

I. Accepted that although the Reception Conditions Directive Re-Cast did not contain a force majeure element- it may be that it exists as a defence for the State (*I think this is very doubtful*!)

II. Whether breach of Art 1 of EU Charter (dignity) could withstand a claim of force majeure.

Part III: Safe Third Country Designation- the *A & B* (2024) Decision

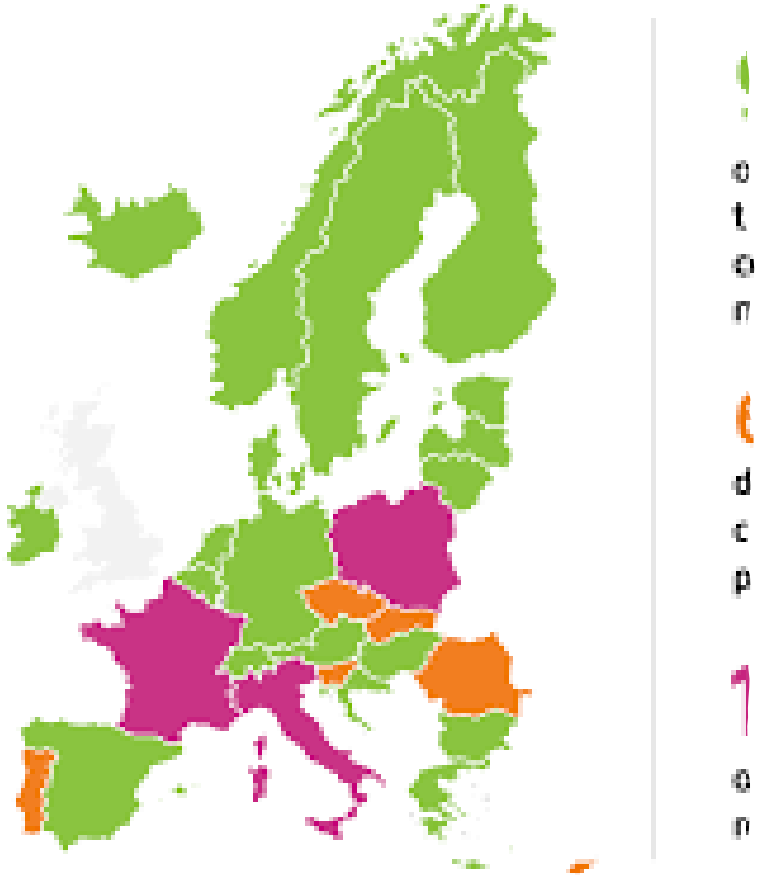
Dr Liam Thornton

Associate Professor, School of Law, University College Dublin, Ireland

Las Palmas de Gran Canaria – 12 June 2024

Co-funded the European Union

The Safe Third Country Concept (Section 72A of 2015 Act and Art. 26 of Procedures Directive 2005)



Minister for Justice may designate a safe third country, where:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion,

(b) the principle of non-refoulement in accordance with the Geneva Convention is respected,

(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment, as required by international law, is respected, and

(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

Where Ireland designates a safe third country, this must per Section 72A(4) be subject to a review "on a regular basis"

Implementing Article 27 of Procedures Directive 2005.

One country designated safe third country to date in Ireland- United Kingdom- in 2020.

The agreement between Ireland and the United Kingdom as to the practical implementation of the returns system to the UK is private and confidential.

It is not made available to international protection applicants due to be returned to the UK

It is not available to lawyers' representing clients.

Why? According to the UK Home Office (FOI Request, 24 May 2024):

- Release of the Standard Operating Procedure for returns relates to security and if information is released it will provide information on immigration controls.
- Would damage the UK's relations with Ireland and the continued existence of the Common Travel Area.

24 May 2024

Dear Liam Thornton

Freedom of Information Request: FOI2024/04261

Thank you for your email of 1 May 2024, requesting sight of our readmissions arrangements held with Ireland. Your request has been handled as a request for information under the Freedom of Information Act 2000 (FOIA).

Your information request is set out below:

request any records under the FOI Act relating to both of the following:

The text of the Standard Operational Agreement/System relating to return of asylum seekers between the United Kingdom and Ireland. [And] document or series of documents between the UK Home Office and Ireland's Department of Justice that relates to how asylum seekers subject to return to Ireland/UK under the Operational Agreement will be made functional.

After careful consideration, we have decided that the information is exempt from disclosure under sections 31(e) and 27(1)(a). Under section 31(e), information is exempt from release where its disclosure may impede on law enforcement including the operation of immigration controls. The information requested pertains to sensitive operational procedures which are not shared publicly; and were they to be shared, could impede immigration controls as those seeking to abuse the Common Travel Area could change their behaviours to evade immigration procedures. Section 27(1)(a) also exempts information for release on the basis that its disclosure would or would be likely to prejudice relations between the UK and any other state. The information requested regards the UK's relationship with Ireland and specifically the Department of Justice, who we work together with on sensitive matters related to the Common Travel Area, including protecting the Common Travel Area and tackling abuse of these arrangements. It also includes information about Ireland's operational procedures.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference **FOI2024/04261**. If you ask for an

Conditions (s 21(17) and s 21(18) of 2015 Act/ Art. 27 of PD 2004)

1. Sufficient connection to the safe third country and is reasonable for them to return there. Sufficient connection encompasses e.g. period of stay previously (lawful or unlawful), familial relations etc.
2. Not in danger of torture, inhuman or degrading treatment or punishment or the death penalty in the safe-third country
3. Will be re-admitted to the safe third country.

Now see Article 38 Procedures Directive Recast which adds an additional criteria:

- No risk of serious harm (as its understood under the QD/Recast QD).

Safe third country concept requires strict adherence to EU law

Article 3(3) of Dublin III (Ireland opt-in):

"Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in **Directive 2013/32/EU [i.e. Recast Procedures]**."

Phelan J. in *A & B* (2024) stated at para 159- 169:

- Art. 3(3) Dublin III refers to Recast Procedures Directive.
- Sets out strict conditions if EU Member States wish to use the safe third country concept.
- Irish law excludes one element of serious harm test (civilians in war).
- The failure to require the Minister for Justice to be satisfied that a person would not be subjected to serious harm on transfer to a third country, if designated as safe, means that Ireland is in breach of the requirements of EU law

Third Countries designated as ‘safe’ must be subject to a regular review if significant material change

Minister for Justice review of s.72A considerations on a regular basis must have regard to up-to-date information from a range of sources including e.g. EASO, UNHCR, Council of Europe, other international organisations.

Recital 48 of Procedures Directive 2013 requires:

“When Member States become aware of a significant change in the human rights situation in a country designated by them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.”

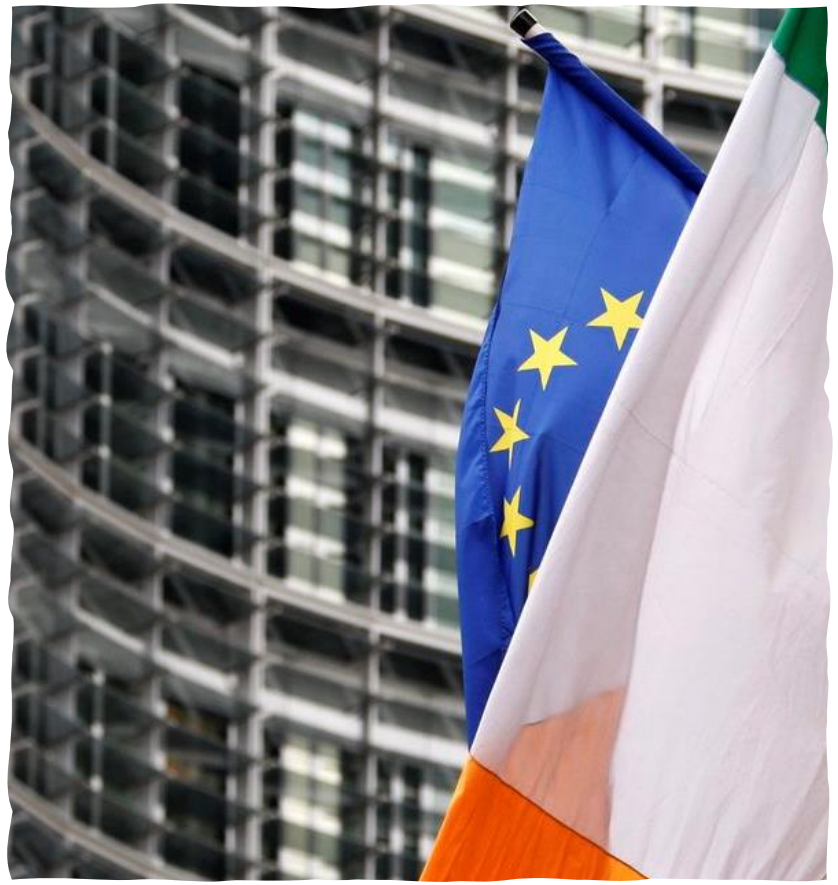
(1) Method for reviewing designated safe third countries

Put in place a methodology for reviewing designated safe third countries, which is required by the Procedures Directive (2005 and 2013)

Ireland had "…not adopted rules of methodology which are sufficient to ensure that an applicant for international protection is not returned to a third country in breach of the minimum requirements of EU law"

Even though Procedures Directive & its recast does not precisely identify what the duty of review includes, the State is obliged to provide a methodology to comply with EU law.

(2) Human rights analysis



There was no clarity in Irish law as to what, if any, human rights analysis (Constitution, EU Charter, ECHR) would be conducted and whom would it be conducted by. Phelan J at [213] stated:

"[T]here is an obligation on the State right up to the time of transfer or return to assess on the basis of information that is objective, reliable, specific and properly updated and having regard to the standards of protection of fundamental rights guaranteed by EU law, whether there are deficiencies which may be systemic or generalised or which may affect certain groups of people"

This obligation emerges from Art. 38 of Procedures Directive (Recast) **as well as** the European Convention on Human Rights Act 2003 (indirect domestic incorporation of the ECHR)

Conclusions

Dr Liam Thornton

Associate Professor, School of Law, University College Dublin, Ireland

Las Palmas de Gran Canaria – 12 June 2024

Co-funded the European Union

Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Natacha Fauveau Ivanovic

Legal framework on asylum and immigration in France

TRALIM 3 Las Palmas, 12 June 2024

Co-funded the European Union

France Legal Frmework

Law on Entry and Stay of Foreigners in France and Asylum Law

European Regulations and Directives

Law on Relationship between Public and Administration

Law on Administrative Justice

Asylum Request Introduction (Law in Force)

Prefecture Appointment

Fingerprints

Interview : personal data and itinerary (no question on asylum request reasons)

Determination: Dublin procedure / French procedure

The Prefecture delivers Asylum certificate which autorises asylum seeker to stay on French territory and asylum file

OFII Appointment

Interview (means and vulnerability)

OFII grants / refuses Receptioon conditions

OFII delivers Payment Card

Asylum Request Recording
(Law in Force)

The Asylum request is recorded by OFPRA (protection administration)

The asylum seeker has 21 days after he received Asylum certificate to send his file to OFPRA

The asylum request comprises asylum request form (personal data, including ethnicity and confession, family data and itinerary) and written statement relating reasons for asylum request

New Asylum procedure (1st August 2024)
Introduction and Recording

Prefecture appointment

OFII (Reception conditions) appointment

OFPRA (Protection administration) appointment – the administration officer will take the first statement from the asylum seeker

Asylum Seekers Right to Stay in France

- until the date of the Cour decision (if the asylum seekers files an appeal against the Administration decision)

- until the notification of the Administration decision (if no appeal)

- until the date of the Administration decision (if the request was inadmissible ; the seeker is from safe country; his presence in France constitutes a threat to public order; the seeker is in retention; or the request is withdrawn)

Reception Conditions

All asylum seekers aged 18 years or more if they have no financial means and if they accept terms of the offer

- **Problem of underage children who are with their parents (cases of FGM in which only the child is asylum seeker)**

Restriction of Reception Condition

Refusal

For new asylum seekers if the administration defines that they have no right to reception conditions or if the asylum seeker declines the offer

At the beginning of the procedure

Withdrawal

For the persons who benefit from reception condition but the administration decides to put an end to material condition

At any stage of the procedure after the reception condition were granted to asylum seeker

Restriction of Reception Conditions

Any restriction of reception conditions must take into account the vulnerability of the asylum seeker

The vulnerability definition in French law is identical to article 21 of the Directive 2013/33/EU

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, 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, in the national law implementing this Directive.

Refusal of reception conditions

The OFII refuses the reception conditons:

The late asylum request (90 days after the entry of the asylum seeker into France);

The reexam;

The asylum seeker refuses regional orientation / proposed accomodation

Withdrawal of reception conditions

The OFII withdraws the reception conditons:

The asylum seeker left the region / accomodation;

The asylum seeker did not respect the administration rules and requests

The asylum seeker gave false information

The asylum seeker introduced several asylum requests under different identity

Reception Conditions

Litigation (Law in force)

Refusal of Reception Conditions

2 Months for Appeal

The compulsory administrative appel to OFII General Director prior to any judiciary action

It can be followed immediately with urgent request to the Administrative Tribunal to suspend decision

If the administration does not responde within two months from receiving administrative appeal the Tribunal can be seized

Withdrawal of Reception Condition

2 Months for Appeal

Common administrative justice pocedure

Request to the administrative tribunal

Urgent request to suspend décision until Tribunal decision on Request

Reception Conditions
Litigation (New Law – from 1 August 2024)

Specific urgent procedure, unique for refusal and withdrawal of reception conditions

Appeal shall be filed within 7 days

Tribunal shall pronounce its decision within 15 days

Asylum request exam

Personal Interview conducted by OFPRA in language choosen by asylum seeker

The Asylum seeker can ask for:

Lawyer;

Psychologist / psychiatrist ;

A member of an association;

Administration Decision

No time framework in which the administration shall render its decision

The period varies

The decision in notified electronically or by recorded letter

Court Procedure

The appeal shall be filed within one month from the notification of the decision

Legal aid is automatically granted when requested and legal aid request suspend the appeal period

In some cases (the case obviously without interest) the Court can render its decision without hearing the applicant

In all other cases a hearing is conducted by 3 judges (normal procedure) or 1 judge (accelerated procedure)

Border Procedure

The asylum seeker can be place in waiting zone if there is doubt:

His / her asylum request shall be examined by another EU country according to Dublin Reguslation;

His/ her asylum request is inadmissible;

His/ her asylum request in manifestly unfounded

Decision is taken by administrative authority (Prefecture)

Waiting Zone

The foreigner can be place into Waiting Zone for 4 days

The 4-day period can be extended by Judge decision for 8 days

The 12-day period can be exceptionnally extended for 8 days.

Retention Procedure

Person placed in Retention can ask for asylum within 5 days upon his placement into retention