

OFFICE OF THE HEAD OF STATE

Law 5/1984, of 26 March, regulating the Right to Asylum and Refugee Status

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PREAMBLE

I. The purpose of this Law is to fulfil the mandate set forth in article 13.4 of the Spanish Constitution and at the same time offer a legal solution for a *de facto* problem, that of refuge in Spain for persons who are persecuted in their countries of origin for ideological or political reasons, in accordance with the criteria of solidarity, hospitality and tolerance which should be inspired by the democratic state defined in our Constitution.

The Law consists of two titles, on the right to asylum and refugee status respectively, which regulate the specific circumstances of both situations.

II. Title I refers to asylum and addresses the following matters:

1. Motives for asylum.- The right to asylum, in its long history, has transformed the scope of protection. If at first it benefited only criminal offenders and never persons persecuted for political reasons, since the end of the 18th century, this tendency has been inverted, so that currently it protects only victims of political persecution, in the broad sense of the term (race, religion, nationality, etc.).

Our Law is generous in this sense, in that along with the victims of persecution it also includes persons who have committed political or related crimes which are not considered to be such in Spain.

2. Protection offered by asylum.- The primary and essential protection consists of not returning the person to the persecuting State and, on this basis, of rejecting requests for extradition. Thus the request for asylum suspends, until the final decision on the matter is made, the ruling of any extradition process affecting the concerned party which may be underway or the execution of the said ruling, as the case may be (art. 5.2). In any case, a foreign national is never expelled to the persecuting country, except in cases of formally agreed extradition (art. 19.1).

Furthermore, asylum can also include the measures set forth in article 2 (authorisation to work, right to social assistance, etc.).

3. Recognition of the right.- The request for asylum can be made at any Spanish border, even when the person does not have proper documentation, in which case precautionary measures may be adopted. Logically, the request can also be lodged within Spanish national territory.

The applicant can make use of legal counsel, which shall be provided by the State if so requested. The Law also provides for the involvement of the United Nations High Commissioner for Refugees in the procedure (art. 5.5).

Asylum status is recognised by extension to first-degree ascendants and descendants of the asylee, as well as to his or her spouse (art. 10).

4. Competence.- Competence in the matter of asylum, as it is an act in exercise of the sovereignty of the State (granting, withdrawal, conditions) is attributed to the Government, which acts upon the recommendation of the Interministerial Commission created within the Ministry of the Interior and comprised of representatives of the ministerial departments affected by the granting of asylum.

The resolutions of the Ministry of the Interior which deny leave to proceed to the request for asylum or which put an end to the request, can be appealed to the Contentious-Administrative courts. The resolutions by the Government which withdraw asylee status can be appealed in the same way. With regard to denied requests for asylum, this legislation introduces the possibility of administrative review of the same, in accordance with the recommendations made by the international bodies specialised in this matter.

III. Title II of this Law regulates the legal status of the refugee in Spain and is a complement to the Convention relating to the Status of Refugees (Geneva, 28 July 1951) and the Protocol on the same subject (New York, 31 January 1967) which today form part of Spanish legislation as a result of adhesion on 22 June 1978.

IV. The United Nations High Commissioner for Refugees and the Spanish Commission for Refugee Aid have been consulted during the elaboration of this Law.

TITLE ONE ON ASYLUM

CHAPTER ONE GENERAL PROVISIONS

Article 1. *The right to request asylum*

Spanish territory shall constitute an inviolable refuge for all the persons to whom asylum is granted under the provisions of this Law. The right of foreign nationals to request asylum is recognised.

It is the duty of the Government to study and decide on the requests for asylum, in consideration of the circumstances of the applicant and the persecuting country.

Article 2. *Content of asylum*

1. Asylum is the protection dispensed by the State at its discretion, in the exercise of its sovereignty, to foreign nationals who are affected by one of the circumstances set forth in article 3 herein and it consists of not returning such persons to the State in which they are persecuted or have been sanctioned, and of the adoption of the following measures:

- a) Authorisation of permanent or temporary residence in Spain.
- b) Issue of the necessary travel and identity documents.
- c) Authorisation to engage in wage-earning, professional or commercial activities.
- d) Any other measures provided for in the International Conventions pertaining to asylees and of which Spain is a signatory.

2. Also, asylees may be given, where appropriate, the social and economic assistance determined in the relevant regulatory provisions.

Article 3. *Causes justifying the request and denial of asylum*

1. The following persons shall be entitled to request asylum in Spain:

- a) Those who have been granted refugee status under the provisions set forth in Title II of this Law.
- b) Those who suffer persecution, are being prosecuted for or have been convicted of crimes of a political nature or of acts related to crimes of a political nature or which are derived from the exercise of a fundamental right recognised in the Spanish Constitution.

2. Asylum can also be requested by foreign nationals who suffer persecution, are being prosecuted or have been convicted in their country of origin, provided that said persecution, prosecution or sanction:

- a) Is based on grounds of race, ethnicity, religion, membership in a certain social group or political opinions or activities, even when it appears to be motivated by an ordinary offence.

b) Is the result of a crime committed in an effort to achieve the fundamental rights and freedoms protected by the Spanish legal system or to combat non-democratic systems.

3. Asylum can also be granted to persons not included in the preceding point, in those cases in which the granting of asylum is justified by humanitarian reasons.

4. Under no circumstances shall asylum be granted:

a) To persons with regard to whom there are well-founded motives to believe that they have committed some type of crime against peace, a war crime or a crime against humanity, as defined in the International Instruments drawn up to make provisions in respect of such crimes and in particular to persons with regard to whom there are well-founded motives to believe that they have taken part in the systematic persecution of persons on the grounds of race, religion, nationality, membership in a certain social group or political opinions or who are involved, whether as perpetrators, accomplices or accessories after the fact, in the torture, kidnapping or disappearance of persons for one or more of the aforementioned reasons. Similarly, asylum cannot be granted to persons who are guilty of acts contrary to the purposes and principles of the United Nations or the Spanish Constitution.

b) To persons who, prior to being granted asylum, have committed, outside the persecuting or sanctioning country, a serious ordinary offence, understanding serious ordinary offences to be those which are punished by the Spanish Criminal Code with a sentence equal to or more severe than medium-term confinement.

c) To persons who have committed a crime against the security of air or maritime navigation, or against land transport, a crime of terrorism or any other act considered punishable by the International Conventions duly ratified by Spain.

CHAPTER II ON THE GRANTING AND RECOGNITION OF ASYLEE STATUS

Article 4. *Presentation of the request for asylum*

1. Foreign nationals who are in Spanish territory shall present their request for asylum to the competent governmental Authority.

Illegal entry into Spanish territory cannot be punished when the person who entered illegally meets the requirements for asylee status, provided that such person goes to the Authorities without delay.

2. The request for asylum made at any border shall bring with it the provisional admission of the foreign national into the country, without detriment to whatever final decision may be made by the Government. If the foreign national does not have the documentation required by the Spanish Authorities, the Ministry of the Interior can resolve that the concerned party be obliged to establish a residence until a ruling is made on the request.

3. The request for asylum presented to an Embassy or Consulate shall be processed through the Ministry of Foreign Affairs.

Article 5. *Effects of the request for asylum*

1. Once asylum has been requested by any foreign national, he or she cannot be expelled until a ruling is made on the request, without detriment to the precautionary measures which the governmental Authority may adopt for reasons of public health or security.

However the Ministry of the Interior, having heard the Commission to which article 6 of this Law makes reference, can rule that provisional admission of the applicant is not to be granted or that he or she is to be expelled from Spanish territory when one or more of the circumstances set forth in article 3, point 4 manifestly apply to the foreign national.

The adoption of this measure shall not suspend the processing of the case.

2. A request for asylum based on any of the causes provided for in this Law shall suspend, until a final decision is made on the matter, the ruling of any extradition process which may be pending with respect to the concerned party, or the execution of the said ruling, as the case may be. For this purpose, the body with jurisdiction in the corresponding extradition process shall be immediately informed of the request for asylum.

3. Regulatory provisions shall establish the procedural rules for the granting of asylum, the provisional situation of the applicants and the documentation which certifies said situation.

4. The asylum applicant shall be informed by the authority with which contact is made of the rights to which he or she is entitled under the provisions of this Law and, particularly, of the right to be assisted by legal counsel.

5. The United Nations High Commissioner for Refugees shall be informed of the presentation of requests for asylum, and shall be allowed to access information on the progress of the cases, to be present in the hearings with the applicant and to present reports, orally or in writing, personally or through a representative authorised for such purpose, to the Ministry of the Interior. Similarly, the legally recognised associations which have as one of their purposes that of providing guidance and assistance to refugees shall have the right to present written reports to the Ministry of the Interior.

Article 6. *Interministerial Commission*

1. Within the Ministry of the Interior, a Commission is created which shall examine the requests for asylum and formulate the corresponding recommendations.

2. The Commission shall be comprised of one representative each from the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of the Interior and the Ministry of Labour and Social Security.

3. The rules for the functioning of the Commission shall be determined in regulatory provisions.

Article 7. *Granting of asylum*

The granting of asylum shall be the competence of the Government, acting at the request of the concerned party.

All requests shall cause the commencement of the appropriate proceedings, under the responsibility of the Ministry of the Interior, to which the reports by legally-recognised Associations which provide guidance and assistance to asylees, shall be incorporated.

Then the proceedings shall be submitted to the Interministerial Commission provided for in the preceding article, so that it may formulate the corresponding recommendation to the Ministry of the Interior.

Once the recommendation has been formulated by the Commission, the following steps shall be taken:

a) If the recommendation of the Commission and the opinion of the Ministry of the Interior are concordant, the said Ministry shall issue the corresponding resolution.

b) If the recommendation of the Commission and the opinion of the Ministry of the Interior are not concordant, the said Ministry shall forward the file to the Council of Ministers for a final decision on the matter.

Article 8. *Requisites for the granting of asylum*

In order for asylum to be granted, it shall suffice that there be indications which are sufficient, depending on the nature of each case, to deduce that one or more of the circumstances set forth in article 3, points 1 through 3 of this Law are present.

Article 9. *Re-examination of denial*

Foreign nationals who have been denied asylum can at any time, if they have new evidence proving their statements or consider that the circumstances justifying denial have disappeared, seek reconsideration of their case by the Ministry of the Interior.

Article 10. *Extension to the family of the asylee*

1. Asylee status shall be granted, by extension, to the first-degree ascendants and descendants of the asylee, as well as to his or her spouse or the person with whom a similar domestic relationship is maintained, except in cases of legal or *de facto* separation, divorce, majority of age or family independence, in which cases the situation of each member of the family shall be assessed separately.

2. In no case shall the right to asylum be granted, by extension, to persons affected by the circumstances set forth in article 3, point 4.

Article 11. *Denial of asylum due to permanence in another State*

Asylee status may not be recognised for persons who for economic or family motives, or any other type of reason, have the right to reside in a third country, or who in fact are currently in such third country, not simply in transit, and who have the possibility of obtaining residence there and the security of not being returned to the persecuting country.

CHAPTER III
ON THE EFFECTS OF RECOGNITION AND LOSS OF ASYLEE STATUS

Article 12. *Right not to be returned*

The recognition of asylee status gives the foreign national the right not to be returned to the country where he or she may have reason to fear persecution or punishment, under the terms set forth in article 3.

Article 13. *Residence and work permit*

The granting of asylee status implies authorisation of residence in Spain, authorisation to engage in wage-earning, professional, and commercial activities, the issue of the necessary identity documents and, where appropriate, travel documents, all in accordance with the provisions set forth in this Law.

Article 14. *Special conditions regarding residence and work*

The granting of asylee status in the case set forth in article 3, point 4 shall imply a temporary residence permit valid for a period of six months. When such period has passed, the asylee status shall be reviewed. Withdrawal of such status must be justified and based upon a just cause which affects internal public order, external State security or the international interests of the State.

In such cases, a residence permit with one or more of the precautionary measures provided for in article 18 may be granted and the general rules regarding work by foreign nationals shall be applicable. Such rules shall also be applicable, in all cases, to family members of the asylee.

Article 15. *Other protective measures*

The other measures set forth in article 2 of this Law shall be adopted with consideration to the effective resources which the State has available to it, in accordance with the provisions of the Conventions of which Spain is a signatory and always in view of humanitarian principles.

Article 16. *Exceptional circumstances*

1. The granting of the residence and work authorisation provided for in the three preceding articles may be denied, on a generalised basis, due to exceptional circumstances of a political, economic or social nature.
2. Statutory provisions shall determine the concurrence of such circumstances and the scope of the measures to adopt, respecting, at all events, any pre-existing situations.

Article 17. *Effects of the denial of asylum*

1. The denial of asylee status, except in the case of illegal entry into Spain and of the provisions set forth in article 5.1 of this Law, shall not imply the expulsion of the asylum seeker, who shall be in the same conditions as any other foreign national with regard to obtaining residence and work authorisation and shall be entitled to the other rights provided for in the International Laws and Conventions of which Spain is a signatory.
2. In the event that expulsion is ordered, such expulsion shall not be to a country where the person has well-founded motives to fear persecution or punishment, in the terms set forth in article 3 of this Law.

Article 18. *Precautionary measures*

1. In addition to the rights provided for in this Law, the foreign nationals with asylee status shall be entitled in Spain to the same rights and freedoms as other foreign nationals.
2. However, for duly justified reasons relating to State security, the Minister of the Interior may, on a temporary basis, adopt measures with regard to the asylee which provide for separation from certain borders or population centres or which establish the obligation to reside in a particular place. For the same reasons, the Minister may resolve that the asylee be obliged to appear periodically before the competent authority.
3. In the event that Spain's foreign relations are seriously and directly affected by the activities in Spain of an Association comprised totally or partially of asylees, which go beyond the exercise of the right to freedom of expression recognised in the Constitution, the Minister of the Interior may, through a resolution setting forth its motives and having previously served notice to such effect, suspend the activities of such Association and propose its dissolution to the appropriate judicial authority. The decision to suspend the activities of the Association may be appealed as set forth in article 21.3 of this Law.

Article 19. *Expulsion of asylees*

1. Foreign nationals with asylee status may be expelled from Spanish territory for serious or repeated activities against the internal or external security of the State. In no case shall they be expelled to a country where there may be reasons to fear persecution or punishment.
2. The Ministry of the Interior shall inform the concerned party of the expulsion, of the proper procedure for appealing the expulsion and of the fact that if an appeal is lodged within a period of ten days the expulsion order shall be suspended, without detriment to other security measures which may be adopted in such a case.
3. At all events, the expelled asylee shall be given a reasonable period during which to seek legal admission to another country.

Article 20. *Withdrawal of asylee status*

The Government may resolve the withdrawal of asylee status or of some or all of the benefits provided for in article 2 of this Law in the following cases:

- a) When the asylum was obtained using false information, documents or statements which were determining factors in the recognition obtained.
- b) When the asylee leaves Spanish territory for more than one year or acquires residence in another country, unless causes justifying such situation are present and previous authorisation is obtained.
- c) When the asylee is able to return to his or her country of origin because of changes which make the persecution or rational reasons to fear persecution cease to exist.
- d) When the asylee engages in one of the causes for the removal of asylee status provided for in the International Conventions ratified by Spain.

Article 21. *Appeals*

1. Resolutions by the Minister of the Interior can be appealed by lodging an administrative appeal with the Council of Ministers.
2. Resolutions by the Council of Ministers can be appealed by lodging a request for review by the same body.
3. Resolutions by the Ministry of the Interior denying leave to proceed to asylum applications, and resolutions by the Government withdrawing previously granted asylum, can be appealed to the Contentious-Administrative courts. The lodging and procedure of such appeals shall conform with the provisions set forth in the rules regulating the jurisdictional protection of fundamental rights and public freedoms.

TITLE II ON REFUGEE STATUS

Article 22. *Recognition of refugee status*

1. Spain, in fulfilment of its international obligations, recognises refugee status and admits as such the persons who meet the requisites set forth in the International Laws and Conventions of which Spain is a signatory and especially the Convention relating to the Status of Refugees, adopted in Geneva in 1951.
2. The concept of political refugee shall be understood to be broadened, with no need to amend this Law, when Spain ratifies any international agreement containing a broader concept, which shall be applicable to any person, even if the person is not of the nationality of the signatory States.
3. The persons who are granted refuge in Spain, whenever they wish to engage in a gainful occupation, either self-employed or employed by another party, may be issued the corresponding residence and work permits.

Article 23. *Processing of the request*

1. The request for recognition of refugee status shall be presented to the Minister of the Interior.
2. The Commission provided for in article 6 of this Law shall study the requests for recognition of refugee status.

The representative in Spain of the United Nations High Commissioner for Refugees shall be invited to the sessions held by the Commission with regard to the requests for refuge.

Article 24. Appeals

The decisions by the Minister of the Interior regarding the recognition or denial of refugee status constitute the final phase of administrative action and can be appealed to the Contentious-Administrative courts following the procedure set forth in the Law on Jurisdictional Protection of Fundamental Rights.

ADDITIONAL PROVISIONS

First Additional Provision

The denial of asylee status, whatever its cause may be, does not prevent the bodies with competence in the area of extradition from finding that, in accordance with the corresponding legislation, extradition is not deemed proper because the crime in question is of a political nature or, although the crime is an ordinary offence, the request for extradition has a political basis.

In accordance with the provisions set forth in article 5, point 2 of this Law, whenever a request for extradition is pending, the decision of the Government shall be made known to the corresponding body.

Second Additional Provision

The Government shall proceed to create the Commission provided for in article 6 of this Law within a period of three months following the entry into force of the same.

TRANSITORY PROVISIONS

First Transitory Provision

Until such date as the regulatory provisions concerning judicial protection are enacted, the procedure provided for in article 21 shall be implemented in accordance with Law 62/1978, of 26 December.

Second Transitory Provision

Persons who are in Spain and have not been granted asylee status can avail themselves of the benefits set forth in this Law within the period established by regulatory provisions.

FINAL PROVISIONS

First Final Provision

The Government is authorised to issue any provisions as may be necessary for the implementation of this Law.

Second Final Provision

The Government shall, within a period of six months, regulate the procedure for the recognition of refugee status.