

## **ASYLUM LAW**

**ACT 9/1994, dated from 19 May, of the amendment of Act 5/1984, dated from 26 March, on the right to Asylum and the Refugee Status.**

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To all who see and comprehend this document,

To your knowledge: the General Parliament has passed and I come to sanction the following Act:

### **REASONS EXPOSURE**

More than ten years of Act 5/1984, dated from 26 March, on the right to Asylum and the Refugee Status, a legal document that develops article 13.4 of the Constitution, have shown the grand potentiality of this Act, allowing to grant asylum to everybody who fulfilled the conditions contemplated by the Legal System.

Nonetheless, experience gathered in the implementation of this Act shows some deficiencies that ought to be rectified. At the same time passing international tools in regard to assigning responsibilities for the asylum applications examinations and the progressive harmonisation of national sets of laws in that field, advise the revision of current rules on the acknowledgement of the refugee status and asylum granting.

In that manner, we comply with the parliamentary mandate included in the proposal of Non- Act passed by the Deputies Congress on 9 April 1991, in which the Government was urged "to adopt necessary measures to ensure the necessary swiftness in the individualised examination of asylum applications" and " to hinder fraudulent usage of the refugee protection system, in order to undertake economic immigration".

Amendment of Act on the Right to Asylum and the Refugee Status covers four fundamental aspects:

Firstly, the double figure of asylum and refuge with different statuses is suppressed. This duality does not originate in any way from demands of protection of

aliens victims of the persecution and which have proved to be a source of confusion and abuse.

The reform recognises asylum, under article 13.4 of the Constitution, as protection bestowed by Spain to any Alien whose Refugee Status is acknowledged in accordance with the Geneva Convention from 1951, in other words, to those who due to well-founded fears of being persecuted for reasons of race, religion, citizenship, belonging to a determined social group or having determined political opinions, that they are not in the country of their citizenship and cannot, or, because of the aforementioned fears, do not intend to use the protection of that country, or that lacking any citizenship and remaining, as a consequence of these developments, out of the country in which they had previously their permanent residence, they cannot or, because of the aforesaid fears, they do not desire to return to it. This concept of Refuge, while regarding persecuted people because of their political opinions, ought to be interpreted in an ample sense. This is a general practice, likewise, in the signing States of the Convention, including sanctionable performances undertaken for political reasons provided that, under the light of the circumstances, it is possible to settle that the concerned person has fears of being prosecuted.

Regarding current asylum for humanitarian reasons that could be granted to certain Aliens who did not suffer from prosecution, they are lead to be dealt with in accordance with the general Set of Laws on Aliens.

On the other hand, protection bestowed to the Refugees by the Spanish Statue surpasses the protection contemplated in the Geneva Convention, by including in an express manner the right to remain and work in Spanish territory.

Secondly, a prior stage in the applications examination is established, which allows a swift refusal of those applications that are clearly abusive or unfounded, likewise other situations, in which the examination either does not concern Spain or there is another State capable of bestowing that protection. That kind of refusal shall be made via a resolution of the applications non-admission to a regular procedure, implemented with the necessary guarantees, in particular the possibility of filing an application for the re-examination with adjourning effects and the participation of the United Nations High Commissioner for Refugees, in cases in which the resolution of non-admission to a regular procedure has been adopted when the asylum seeker is at the border. The entrance into Spanish territory of those Aliens, who seek asylum at border, shall, therefore, depend on the administrative go-ahead for their application.

This measure responds, on one hand, to the considerations collected in the aforementioned Proposal of Non- Act dated from 9 April 1991, which was stating that "the system of political refugees protection is invalidated in the practice by the increasing figure of applications, in its majority by economic immigrants, what makes more difficult the appropriate hosting and provokes next the delay in the applications resolutions, becoming in practice the main stream of irregular immigration towards our country."

On the other hand, the concerned Bill adjusts to the conclusion number 30 of the Executive Committee of the programme of the United Nations High Commissioner for Refugees, according to which "it would be useful for national procedures of determination of the Refugee Statue to foresee special previsions in order to deal with swiftness the applications that are deemed so clearly unfounded that they do not deserve being examined in depth, since these kind of applications are nothing but a burden for the affected countries and injure interests of those who have reasons to apply for the acknowledgement of the Refugee Statue.

Finally, it responds to what is settled in international Conventions, in which Spain will be a party (Dublin Convention and Schengen Convention), which determine the Member State that is in charge of examining of each asylum application.

Thirdly, it tackles the modification of the effects that produces the abrogating resolution. The current regulation of the effects of the Refugee Status has had an important effect of enticement for economic immigrants towards the asylum system, by placing the Alien whose asylum application has been rejected, even though it lacks any fundament, in a privileged position compared to that one, who has followed the regular migratory procedure set by Spanish legal system, via the application for the appropriate visa.

The Act has, therefore, as a basis, the general principle, accepted by the total of signing parties of the Geneva Convention, that an asylum seeker whose application is not admitted to a regular procedure or refused to, ought to leave Spanish territory, unless they fulfil the requirements in order to enter or remain in the country, pursuant to the general Set of Laws on Aliens, or that, for humanitarian or public interest reasons, they are exceptionally authorised to do it.

Finally, it adopts to the doctrine of the Constitutional Court's provision under article 18.3 of this Act, related to the power that was granted to the Minister of the Interior to suspend the Aliens' associations. In accordance with what was set in ruling 115/1987, dated from 7 July by the Constitutional Court, this power is overwhelmed.

# **ACT of Right to Asylum and the Refugee Status**

## **CHAPTER ONE GENERAL PROVISIONS**

### **Article 1. Right to apply for asylum.**

Spanish territory will be an inviolable refuge for every person to whom the asylum will be accorded under this Act. Aliens' right to apply for asylum is acknowledged.

### **Article 2. Asylum body/subject-matter, contents**

1. The Right to Asylum acknowledged under the article 13.4 of the Spanish Constitution means the protection provided to Aliens to whom the Refugee Status is acknowledged and which consists of the neither devolution nor expulsion based on the article 33 of the Convention on The Refugee Status, signed in Geneva on 28 July nineteen fifty-one, and of the application of the following measures during the period in which the circumstances that were the reason for application for the right of asylum subsist:
  - a) Authorisation of residence in Spain.
  - b) Issuing of the necessary travel and identity documents.
  - c) Authorisation to work, act as professional or trader.
  - d) Whatsoever is exposed in the International Conventions, and related to the refugees subscribed by Spain.
  
2. Likewise, the refugees may be granted, in the case that corresponds, social and economic benefits that are determined by Law.

**Article 3. Reasons which justify the asylum grant or rejection.**

1. The Refugee Status shall be recognised and, therefore, granted to every alien who fulfils the requirements established in the International Instruments ratified by Spain, especially those established in the Convention on the Refugees' Status, signed in Geneva on 28 July nineteen fifty-one, and in the Protocol on the Refugees' Status, signed in New York on 31 January nineteen sixty-seven.
2. Asylum shall not be granted to those whose situation is described in any of the cases from articles 1.F and 33.2 of the aforementioned Geneva Convention.

**SECOND CHAPTER  
OF THE ASYLUM GRANT**

**Article 4. Asylum application**

1. When the alien who pretends to apply for asylum arrives in Spain, they shall make an application to the responsible Governmental Authority, in person or, in cases of that being impossible, by proxy. In the latter one, the applicant shall ratify the application in person, once the obstacle to do it has been eliminated. In any case, they shall have the right to a legal adviser, an interpreter and medical services.

Unlawful entry into Spanish territory shall not be punished if it was carried out by a person who fulfils all the requirements proper to the Refugee Status, provided that they present themselves immediately to the Authorities.

2. The administrative go-ahead concerning the asylum application at any border post shall mean the authorisation to entry into the country territory and to allow the applicant to stay temporarily

within the country, Subject to; without prejudice to what might be agreed upon in the file final resolution.

3. If the alien does not bear legal documents required in order to stay in Spain, The Spanish Foreign Office may agree upon establishing a mandatory permit of residence to the interested person while their application is resolved.
4. Asylum application filed in a Spanish Embassy or Consulate will be made by the Spanish Foreign Office.
5. The asylum seeker ought to collaborate fully with the Authorities, in order to vouch for and check their identity, as well as the facts and claims that are the basis of their application.
6. They ought to inform the Authorities, at their earliest convenience, about the current place of residence or any change in it, likewise, about the persons who make part of their closest family.

#### **Article 5. The Asylum Application Effects.**

1. The asylum sought by any alien, shall not be rejected neither at the border post, nor expelled until their asylum application has been rejected or agreed upon. The appropriate Authority may adopt the precautionary measures for public health or safety reasons, as well as to assist the immediate human needs.
2. The asylum application based on whichever cause contemplated by this Act shall mean, until the final decision, the non-extradition of the interested person that could remain pending, or, in its case, the enforcement of this one. For that purpose, the asylum application shall be filed immediately at the body which is responsible of carrying out with the process.

3. The rules of procedure to accord the asylum, in due form, shall be established together with temporary status of the seekers and the documents required in such circumstances.
4. The asylum seeker will be informed by the Authority to which they may address about the rights that they have in accordance with this Act, and in particular, about the right to lawyer's presence.
5. The United Nations High Commissioner for Refugees will be informed of the asylum application filing. The High Commissioner has the right to be given notice on the stage at which the application is currently, as well as to witness the seeker's formal interviews and make reports, both written and oral, in person or by proxy, at the Home Office; likewise, it shall be allowed to the lawfully established associations to have among their aims to advise and aid the refugee to handle the written reports at the Home Office.
6. The Minister of the Interior, provided that there is such proposal made by the body in charge of the asylum application, and after a hearing of the Representative of the United Nations High Commissioner for Refugees, will be able to, by means of a text of the judgement, lay out the reasons for the decision, not to admit them to a regular procedure, if any of the circumstances mentioned below have place:
  - a) Those that are specified in article 1.F and 33.2 of the Geneva Convention on the Refugee Statute/Act from 1951.
  - b) That in the application there are not invoked any reasons that warrant the recognition of the Refugee Status.
  - c) That it is a case of a mere reiteration of an asylum application that was already denied in Spain, provided that no new circumstances have appeared in the country of origin that may

signify crucial changes in the merits of the application.

d) That the application is based on facts, data or allegations that are false or improbable on purpose or that, as they are no longer valid, they do not justify the necessity of protection.

e) In cases in which it is not Spain's obligation to examine the application under the International Conventions of which it is a Party. The State responsible the examination shall be pointed out in the resolution of no admission to a regular procedure. In that case, the aforementioned State shall accept in an explicit way that responsibility. Under all circumstances, within the territory of the aforesaid country, will be granted all sufficient guarantees to protect the person's life, freedom and the rest of the principles, as stated in the Geneva Convention.

f) In cases in which the asylum seeker has already the Refugee Status or they have the right to reside or to obtain asylum in a third State, or in cases in which they come from a third country in which they could have already asked for protection. In both cases, in the aforementioned third State, there shall be neither danger for their life nor exposition to tortures, nor an inhuman or humiliating treat and the person shall have a real protection against the refolement (deportation) to the persecutor country, under the Geneva Convention.

7. In cases in which the application is filed at the Spanish border, the resolution of non-admission to a regular procedure shall be known, at the latest, within four days from the moment of the application filing. The UNHCR Representative in Spain shall be informed immediately about the application filing and has the right to convene a meeting with the asylum seeker if that is the UNHCR's wish.

8. The confirmation, subsequent to the admission to a regular procedure, of any circumstance that would have justified the non-admission will be in all cases the reason for the application denial.

#### **Article 6. Inter-Ministerial Commission.**

1. Within the organism of the Ministry of Interior there will be created the Inter-Ministerial Commission whose aim will be to examine the asylum applications and to lodge concerning proposals.
2. One representative of the following Ministries will settle the Commission: Ministry of Foreign Affairs, Justice, the Interior and Social Affairs.

The UNHCR Representative in Spain will be convened to its meetings.

3. The work of the Commission will be done according to stipulated regulations.

#### **Article 7. Asylum granting procedure.**

Whatever filed asylum application shall signify the commencement of legal proceedings, in charge of the Ministry of the Interior, to which it will be attached the reports of the acknowledged by law Associations, which aim, amongst others, at advising and helping the refugee.

Immediately after that, the asylum application shall be analysed by the Inter-Ministerial Commission contemplated in the previous article, in order to achieve a corresponding proposal made to the Ministry of the Interior.

Once the Commission Has made the proposal, the proceedings should be as the following ones:

- a) If there is an agreement upon the proposal made by the Commission and the criteria chosen by the Ministry of the Interior, the latter one shall announce a corresponding decision.
- b) If there is a disagreement upon the proposal made by the Commission and the criteria chosen by the Ministry of the Interior, the latter one shall refer the asylum application to the cabinet in order to decide upon the application.

### **Article 8. Asylum granting requirements.**

In order to decide favourably upon the asylum application it is sufficient to notice the necessary indications, with accordance to each case's nature, to deduce that the asylum seeker fulfils all the requirements to which the reference is made in article 3.1 of this Act.

### **Article 9. Refusal re-examination.**

The alien to whom the asylum has been refused shall be able to, at any time, and provided that they possess new evidence elements of their statements or deem the disappearance of the circumstances that justified the refusal, urge the Ministry of Interior to review their file.

### **Article 10. Asylum familiar scope.**

1. The asylum shall be accorded, by extension, to the forebears and descendants, of first degree kinship, likewise to the refugee's spouse , or to the person to whom he/she is bound by an analogue affection relation and living together, except in cases of legal separation, finishing the relation , divorce, being of legal age or having an independent family, in which the situation of each family member shall be assessed individually.

2. Under no circumstances, the asylum should be accorded by extension, to any person mentioned in article 3.2.

Article 11. Article 11 remains empty.

### **CHAPTER III ON THE EFFECTS OF ASYLUM GRANTING AND REVOKING**

#### **Article 12. Right to *non-refoulement* (deportation).**

Asylum granting accords an alien the right to non-refoulement to the country in which they may have founded reasons to fear persecution or punishment, in terms of what is contemplated in article 2.

#### **Article 13. Residence and work.**

Asylum granting implies the authorisation to reside in Spain, the authorisation to carry out labour activities, both professional and commercial; issuing of the necessary identity card, and, if that is the case, a travel document, all that in accordance to what is contemplated in this Act.

**Article 14.** *(Article 14 without contents for the reforms introduced by the Act 9/1994)*

#### **Article 15. Other protective measures.**

The implementation of the other measures contemplated in article 2.2 of this Act shall be done bearing in mind the effective measures on which counts the State, in accordance with what contemplate the Conventions signed by Spain, and attending always humanitarian principles.

## **Article 16. Exceptional circumstances**

1. In general terms, exceptional circumstances of a political, economic and social nature may be the reason of denial of granting the authorisation of residence and work permit contemplated in the present Act.
2. A rule with Act statue will determine the situation in which the aforementioned circumstances occur as well as the scope of the implanted measures, respecting, under all circumstances, the already existent situation.

## **Article 17. Effects of denial resolution.**

1. The non-admission to a regular procedure or the denial of the asylum application will determine the alien's rejection at the border post or a compulsory leaving or expulsion from the Spanish territory, according to each case, if the alien does not fulfil any of the requirements needed in order to enter o stay in Spain in accordance with the general Statue on immigration.
2. Nevertheless, despite the case contemplated in the previous number, for humanitarian or public interest reasons, the stay in Spain of the interested person whose application has not been admitted to a regular procedure or denied, may be authorised, in the general immigration framework, particularly if aliens are persons who, as a consequence of conflicts or serious riots of a political, ethnical or religious disposition, have been obliged to abandon their country and do not fulfil the requirements exposed in article 3.1 of the Act.
3. Under all circumstances, the rejection or the expulsion of the interested person shall not determine neither a failure to fulfil the obligation established in article 3.3.1 of the Geneva Convention on the Refugee Status nor mean sending the person to a third State in which they would lack active protection against being

refouled to the persecutor country, under the aforesaid Convention.

### **Article 18. Precautionary Measures**

1. Additionally to the rights contemplated in this Act, the aliens refugees shall enjoy in Spain the same rights and freedoms as the rest of the aliens.
2. For reasons duly justified by the State security, however, the Ministry of the Interior shall be able to adopt, as a temporary disposition, the measures of distancing from the country borders or exceptionally pointed out population centres or of the setting of the obligation to reside in a certain area. It shall be able to agree upon, for the same reason, refugee's appearances on periodical basis before the competent authority.
3. In cases in which Spain's foreign relations were seriously and directly affected by the activities carried out by within its territory by an Association composed totally or partially of refugees, who surpass the exercise of the right to the freedom of speech acknowledged in the Constitution, the Ministry of the Interior shall be able to bring an action of its dissolution before the judicial authority, likewise precautionary suspension of its activities.

### **Article 19. Refugees' removal.**

1. The aliens refugees might be removed from the Spanish territory in accordance with articles 32 and 33 of the Geneva Convention on the Refugees' Status.
2. The Ministry of the Interior shall acquaint the interested person with the expulsion, noticing them the resources that proceed against the removal, likewise that if they carry it out in the time limit of ten days the previous action will be suspended, without

excluding additional safety measures which might be taken in that case.

3. Under all circumstances, the expelled person shall be granted a reasonable time limit in order to seek their legal admission in a different country.

### **Article 20. Revocation**

1. The Government may agree upon a reversal of asylum or of any or all benefits contemplated in article 2 of this Act in the following cases:
  - a) When the asylum has been granted through data, documents or declarations which are false and at the same time determinant in the granting received.
  - b) When occur any of the cases contemplated in the International Conventions ratified by Spain concerning the deprivation of refugee's status or their non-enforcement.
2. However, without prejudice to what is contemplated in the previous number, for humanitarian reasons or for public interest the stay of the interested person in Spain may be authorised, within the framework of the general alien law.

### **Article 21. Appeals.**

1. The resolutions contemplated in this Act will bring to an end to the administrative action and shall be possible to appeal them before the jurisdiction for suits under administrative law, except in the cases in which there has been already filed the re-examination application to which article 5.7 refers to, which will signify that the resolution which decides on the application in

question brings to an end the administrative action. The reviews will enter into a special procedure.

2. If the asylum seeker files a review before the jurisdiction for suits under administrative law against the act which would decide upon the re-examination application to which article 5.7 refers to, this action will adjourn the executive action provided that the petitioner has applied for it and that the UNHCR's Representative in Spain had informed in a favourable way about the administrative go-ahead of the asylum application.

## **SECOND TITLE** **(deleted)**

### **ADDITIONAL DISPOSITIONS**

#### **First one.**

The asylum refusal, motivated by whichever cause, goes without prejudice to what the competent bodies with regard to the matter of extradition may understand, in accordance to the respective set of laws, so as the extradition does not take place as they deal with a crime of a political disposition, even if it is an ordinary offence, to justify the application for extradition by political kind of arguments.

In cases in which, in accordance with what is contemplated in article 5.2 of this Act, the extradition application is pending , the respective body shall be acquainted with Government's decision.

#### **Second one.**

The Government shall constitute the Commission contemplated in article 6 of this Act, within the time limit of three months, since the moment it entered into force.

## **TEMPORARY PROVISIONS**

### **First one. Pending applications.**

1. The procedure of asylum applications filed before the entry into force of this Act , shall be governed according to what contemplates the Act 5/1984 concerning jurisdiction, procedure and effects of the asylum denial.
  
2. The Government will lodge the report on the situation of persons who may see their situation affected with the House of Commons, under the contents of this Temporary Provision, with the following instructions in all circumstances:
  - a) number of pending applications on the date of the enforcement of the Act.
  - b) average time devoted to one file
  - c) statistic analysis of the personal circumstances
  - d) envisaged solutions and number of persons affected

### **Second one. Already granted and in force statuses.**

The basis of protection acknowledged by the Act should be applied to every person to whom asylum or refuge had been granted before the enforcement of this Act.

## **FINAL PROVISIONS**

### **First. Structure of the Act 5/1984.**

Therefore, it remains delayed the division into Titles of the Act 5/1984 dated from 26th March, which regulates the right of asylum ad of the Refugee Status.

**Second. Authorisation to issue provisions on further development.**

The government is authorised to issue as many provisions as they deem necessary in order to further develop the Act, within a time limit no longer than six months since entrance into force.

**Third. Implementing regulation.**

The government, within the time limit of three months, shall adopt the regulation in order to implement the Act regulating the right of asylum and the Refugee Status, passed by the Royal Decree 551/1985, dated from 20 February, to what is contemplated in this Act. That shall be done especially to complete the rules of non-admission to a regular procedure of the asylum applications.

