

## **ACT II**

**ROYAL DECREE 203/1995, DATED FROM 10 FEBRUARY, BY MEANS OF WHICH THE IMPLEMENTING REGULATION OF ACT 5/1984 IS PASSED, DATED FROM 26 MARCH, ON THE RIGHT TO ASYLUM AND THE REFUGEE STATUS, AMENDED BY ACT 9/94 DATED FROM 19 MAY.**

Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, amended by Act 9/94 dated from 19 May, establishes the basic principles which ought to rule this matter within the framework of our jurisdiction.

In that sense the new Act lodges in a repetitive manner to the precepts of the Geneva Convention from 1951 and the Protocol from 1967 on the Refugee Status, and has as boundaries, in its procedural scope, to build a general framework within which the asylum application procedure should adjust, by means of introducing the procedure of no admission in order to hinder the fraudulent usage for economic immigration of the system of refugee protection.

As an accompaniment to this new Act, the attached Regulation is decreed. Its content focuses on the procedure to determine the acknowledgement of the Refugee Status as well as the rules and guarantees that ought to apply to the procedure of no-admission, both at the border posts and within the country. Likewise, it deals with the effects of favourable or unfavourable resolution, both through administrative and legal procedures, regulating in particular the content and the effects of the favourable report of the UNHCR in the procedure of no admission at the border posts.

Finally, the contemplated issue is the exceptional situation that signifies the displacements as a consequence of conflicts or serious riots of a political, ethnical or religious nature, for which a specific legal cover is created. It includes the access to the assistance facilities foreseen for the asylum and refugee seekers.

In accordance with, as a proposal of the Ministers of Foreign Affairs, of Justice and Interior, and of the Social Affairs, with the favourable report of the Interdepartmental Commission on Aliens, with the approval of Public Administrations, by common consent with the State Council and after Cabinet's deliberation on its meeting held on 10 February 1995.

### **The Law stipulates that**

#### **Single Article**

The Regulation for the implementation of Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, amended by Act 9/94, and which text is inserted below.

#### **Additional Provision**

Within the General Presidency of Electing Processes, Aliens and Asylum of the Ministry of Justice and the Interior it is created the Office of Asylum and Refuge, which shall be ruled by the Asylum General Vice President. Its structure shall be established in the corresponding Relations of Labour Positions.

#### **Single Abrogating Provision**

The Real Decree 511/1985 dated from 20 February, which passed the Regulation for the implementation of the Law on the Right to Asylum and the Refugee Status, is therefore abrogated likewise any other rule of the same or lower rank that oppose to this Royal Decree.

#### **First Final Provision**

The Ministers of Foreign Affairs, of Justice and the Interior and of the Social Affairs are therefore authorised to issue together or in a separate manner within the field of their competition the provisions necessary for the implementation of what is provided by this Royal Decree.

**Second Final Provision**

This Royal Decree will come into effect a day after its publication in the daily Official Gazette of the Spanish State.

Madrid, on 10 February 1995

Refer it to the Cabinet,

Minister of Foreign Affairs,

Minister of Justice and the Interior,

Signed, Javier Solana Madariaga

Signed, Juan Alberto Belloch Julbe

Minister of Social Affairs

Signed, Cristina Alberti Alonso

**Regulation of the implementation of Act 5/1984, dated from March, on the Right to Asylum and the Refugee Status, amended by Act 9/1994 dated from 16 May.**

**PRELIMINARY CHAPTER**  
**General Provisions**

**Article 1. Applicable Regulation.**

The acknowledgement of the Refugee Status, likewise the legal system that apply to the asylum seekers shall be regulated by what stipulates the Geneva Convention dated from 28 July 1951 and the New York Protocol dated from 31 January 1967 on the Refugee Statue; and by International Treaties and Conventions on that matter subscribed by Spain or that Spain shall subscribe in the future, in particular within the European Union; and by Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, and by this Regulation.

**Article 2. Interministerial Commission of Asylum and Refuge.**

1. The Interministerial Commission contemplated in article 6 of Act 5/1984, dated from 19 May, will be compounded by representatives of the Ministries of Foreign Affairs, Justice and the Interior and Social Affairs. Its chairman shall be the General President of Electing Processes , Aliens and Asylum, or failing him, the Asylum General Vice President. They will fulfil the functions of the Secretary of the Interministerial Commission of Asylum and Refuge, without full voting rights, the Asylum General Vice President, or failing him any other civil servant from the Asylum and Refuge Office that points out the President. The UNHCR Representative in Spain shall be convened to its sessions and shall attend without full voting rights.

2. The previsions on the functioning of the associated organs detailed in Chapter II Title II of Act on the Legal System of Public Administration and Common Administrative Procedure shall apply to the Interdepartmental Commission.

3. The Interdepartmental Commission of Asylum and Refuge has the following duties:

- a) to examine the asylum applications and refer the proposals of resolution to the Ministry of Justice and the Interior;
- b) to establish and revise on a periodical basis the general criteria on which the proposals of no- admission to a regular procedure will be based and which will be referred to the Minister of Justice and the Interior on the basis of article 6.5 of Act 5/1984, on the Right to Asylum and the Refugee Status, by the Asylum and Refuge Office pursuant to article 3 chapter e) of this Regulation;
- c) to refer to the Ministry of Justice and the Interior the proposals of stay accorded pursuant to article 17.2, on the effects of the Abrogating Provision, of Act 5/1984 on the Right to Asylum and the Refugee Status;
- d) to make proposals on the documents which will be issued to the asylum seekers, to the acknowledged refugees and to those who receive the authorisation to stay in Spain for humanitarian or public interest reasons according to article 17.2 of Act 5/1984, on the Right to Asylum and the Refugee Status, on the effects of the Abrogating Provision;
- e) to have the knowledge of the initiatives and criteria on which social and integration policy bases and of the groups that benefit from the implementation of Act 5/1984, on the Right to Asylum and the Refugee Status;
- f) to manage to get information on countries and regions from which the asylum or refuge seekers come from to Spain, and to communicate it to the responsible organs of the Public Administration for the International Co-operation;
- g) to examine the revocation and cessation applications of the refugee statue and to make proposals to the Minister of Justice and the Interior the resolution deemed appropriate by the Commission;
- h) to propose to the Minister of Justice and the Interior, if appropriate, the implementation of the displaced persons system, contemplated in First Additional Provision, chapter 6 of this Regulation.

4. The Interministerial Commission of Asylum and Refuge may, in the necessary circumstances; to obtain additional information from any public or private organ, or from the person concerned himself.

### **Article 3. Asylum and Refuge Office.**

Asylum and Refuge Office, created by the Additional Provision of the Royal Decree to be passed in this Regulation, has the following functions:

- a) to take procedural steps in order to grant the asylum;
- b) to constitute a material support of the Secretary of the Interministerial Commission of Asylum and Refuge;
- c) to inform the person concerned about the resolutions of their applications, without prejudice to what is accorded in the Royal Decree 1521/91 dated from 11 October on Creation, Competences and Functioning of Aliens Offices;
- d) to inform and guide the asylum seekers about existing social services;
- e) to propose to the Minister of Justice and the Interior, through the General President of Electing Processes, Aliens and Asylum, the no-admissions to a regular procedure of asylum applications in accordance with article 5.6 and 5.7 of Act 5/1984, on the Right to Asylum and the Refugee Status;
- f) to inform the Interdepartmental Commission of Asylum and Refuge, on regular basis, about the accorded no-admissions and about the applied criteria;
- g) to analyse in the aforesaid Commission the proposals of authorised stay foreseen in article 17.2, on the effects of the Abrogate resolution, of Act 5/1984, on the Right to Asylum and Refugee Status, within the procedure of the no-admission, as contemplated in article 2.3c);

- h) to provide the UNHCR Representative in Spain the statistic data and all type of information related to asylum seekers and refugees in Spain, in accordance with what appears contemplated in article 35 of the Geneva Convention from 1951 and the Refugee Statute.

## **CHAPTER I**

### **Asylum Application and its Effects**

#### **FIRST SECTION: ASYLUM APPLICATION FILING**

##### **Article 4. Place where the asylum application is filled.**

1. The alien who wishes to obtain the asylum in Spain, shall file their application before any of the following organs:

- a) Asylum and Refuge Office;
- b) Entry border posts on the Spanish territory;
- c) Aliens Offices;
  
- d) Provincial or district police department which are pointed out by the Order from the Ministry of Justice and the Interior;
- e) Diplomatic missions and Spanish Consular Sections abroad.

2. When the UNHCR Representative in Spain applies to a Spanish government for an urgent admission of a refugee or refugees acknowledged under his mandate, and who are in a situation of high risk in a third country, the Minister of Foreign Affairs, through the Diplomatic Mission or a Consular Section from Spain or any other country with the co-operation system, will provide all that is needed in order to verify appropriately the situation, to interview the person concerned and to inform the CIAR. The aforesaid Ministry shall issue visas, travel documents or safe-conducts and be in charge of any other proceedings that may be needed, according to instructions provided by the general Presidency of Consular Affairs from the Ministry of Foreign Affairs, in order to facilitate the transfer to Spain under articles 16 and 29.4 of this Regulation.

##### **Article 5. Asylum seeker's information on their rights.**

1. The Public Administration, together with UNHCR and the non-governmental organisations whose aim is to support the refugees, will elaborate a folder with all the useful for the asylum seekers information available in several languages. This document will be placed in the organs mentioned in the previous article and handed to the asylum seekers at the time they file the application so they may enter in contact with the organs that they deem appropriate.

2. Asylum seekers who are on the national territory shall be informed by the authority to which they apply about the necessity to provide either indications or evidence that justify their application likewise the rights that correspond them under Act 5/1984, on the Right to Asylum and the Refugee Status, especially the right to have an interpreter and a lawyer assistance. Likewise, the authorised body before which the asylum application has been filed shall provide the asylum seeker with health care services whether it is desired and shall guide them by informing about the existent social services in order to cover all immediate basic human needs.

**Article 6. Asylum application remittance to the Asylum and Refuge Office and its acquaintance to the interested organs and bodies.**

1. Asylum applications and reports remittance and acquaintance with them by the responsible organs and among the interested organs and bodies, shall be developed by means of usage of the state-of-the-art technology available at the time.

2. Asylum applications filed abroad will be lodged to the Asylum and Refuge Office through the Ministry of Foreign Affairs, with enclosed corresponding report written by the Diplomatic Mission or Consular Office.

3. In other cases, asylum applications, with enclosed corresponding documents, shall be remitted by the aforementioned organs, as contemplated in article 4 to the Asylum and Refuge Office in a direct and immediate manner.

4. The Asylum and Refuge Office shall acquaint the UNHCR representative in Spain with the whole of filed application. This acquaintance shall be carried out within 24 hours, since the moment of its filing by the Asylum and Refuge Office.

#### **Article 7. Time for application filing.**

1. The asylum application within Spanish territory shall be filed within the period of one month since the moment of alien's entry into the country, unless there are circumstances under which the alien may enjoy a longer than mentioned above legal stay, in which case they may make the application before its expiration. When the circumstances, which justify an asylum application, are due to an unforeseeable cause that occurred in the country of origin, a one-month term will be calculated since the moment in which the events that justify the fear of persecution took place.

2. When it is the case of an asylum seeker who has stayed in the illegal situation for more than a month, or who has filed the asylum application having the order for disfranchisement, the application shall be deemed as filed under article 5.6 d) of Act 5/1984, on the Right to Asylum and the Refugee Status, and shall be examined within the ordinary proceedings of no-admission to a regular procedure.

#### **Article 8. Form of asylum application filing.**

1. Aliens who already find themselves on Spanish territory and who desire to seek asylum shall file the asylum application by a personal appearance before any corresponding organ, in accordance with article 4. Whether there existed a physical or legal impossibility of the person concerned, they might file the application by an identified proxy by means of any legally valid manner that may be proved trustworthy.

2. Above mentioned in article 4.1 Organs shall provide a specific form for the asylum seekers, both in Spanish and other languages.

3. The application will be made by means of filling and signing the corresponding form by the asylum seeker, who shall expose in a detailed manner the facts, data or allegations on which they base their claim. Together with the application they should provide a photocopy of their passport or a travel document, which shall be handed in if the application is given an administrative go ahead. They shall hand in all other kind of identification documents or documents of other nature if they deem they able to support their claim. In a situation in which the asylum seeker does not provide any type of personal documents they shall justify the cause of it.

4. Asylum seekers who are already on the national territory will have the right to an interpreter and a legal assistance in order to file their application and after that, during all the proceedings.

5. The Asylum seeker will point out, in their case, persons who depend on them or make part of their family nucleus indicating if they apply for asylum for them by scope, in pursuant to article 10 of Act 5/1984, on the Right to Asylum and the Refugee Status. When the abovementioned persons are in the Spanish territory, they shall appear together with the asylum seeker, bearing their personal documents if they apply for asylum by scope. If the familiar asylum by scope is not applied for, names and personal data of persons whom the asylum seekers states as dependent will be written down.

#### **Article 9. Asylum seeker's duties.**

1. Asylum seeker shall prove their identity and provide a trustworthy version of the persecution they suffered from, by means of the pertinent evidence or sufficient indications of the circumstances, which would justify asylum granting. Based on asylum seeker version, the Public Administration will make a research on the objective alleged circumstances and assess its transcendence regarding asylum.

2. They shall likewise indicate an address, and acquaint the appropriate organ, without delay, about any change of it, as well as of those who form part of **their family nucleus**. The address stated in the application will be deemed as the official address to send notifications, except for the situation in which the asylum seeker provides a different one during the process of admission to a regular procedure.

#### **Article 10. Public Administrations duty to collaborate.**

Competent Public Administrations shall notify to the Asylum and Refuge Office any kind of procedure that affects asylum seekers, or, if that is the case, refugees, according to what is contemplated in article 4 of Act 30/1992, dated from 26 November, on Legal System of Public Administrations and Common Administrative Procedure.

## SECOND SECTION: ASYLUM APPLICATION FILING EFFECTS.

### **Article 11. Provisional residence of the asylum seeker.**

1. All asylum applications filed in Spain, will signify the authorisation to stay provisionally in its territory, neither without minding the legal situation in which the asylum seeker is, contemplated according to the sets of laws on Aliens nor the documents at their disposal, but without prejudice to what comes contemplated under article 14 of this Regulation and the circumstances in which the applicable rule is the non-admission to a regular procedure foreseen in Chapter II.

2. The non-admission to a regular procedure of an application filed at border post shall have the effects contemplated in the previous paragraph.

### **Article 12. No-expulsion guarantees given to the asylum seeker.**

Once the asylum has been sought within the Spanish territory according to the rules and time limits set in article 7, and pursuant to what is contemplated in article 5.1 of Act 5/1984, on the Right to Asylum and the Refugee Status, the Alien cannot be expelled until their application has been analysed and decided upon, without prejudice to the **cautionary measures** which the competent authority might adopt.

### **Article 13. Asylum seeker provisional documents.**

1. Asylum seeker shall be bestowed with a supporting its application document duly sealed that shall be put together with their passport and make possible their residence in Spain within the period no longer than sixty days. They should acquaint the appropriate organ with any address change.

2. Once the asylum application has been given an administrative go-ahead, the authorisation to permanent shall be proved by the issuing to the person concerned an asylum seeker document, which will make them able to permanent in Spain for the time procedural steps concerning their application last.

3. At the moment when the aforesaid document is delivered, the person in question, provided they have not done it previously, shall deposit their personal documents and travel documents, and which shall be kept in a deposit for the hypothetical case of a favourable resolution of the asylum application.

4. For the time procedural steps concerning their application last, the asylum seeker should acquaint the Asylum and Refuge Office, in an immediate manner and through the Organ that corresponds according to their place of residence, with any address change.

#### **Article 14. Cautionary measures.**

Provided that the asylum seeker has not at their disposal documents demanded in order to permanent in Spain, the Ministry of Justice and the Interior may accord the compulsory place of residence for the person in question until the final decision upon their application is made. The Civil Governor of the province in which they stay would notify that fact to the asylum seeker. Likewise, for public safety reasons, the Minister of Justice and the Interior, may adopt any of the measures contemplated in article 6 of the Public General Act of Parliament 7/1985, dated from 1 July, on Aliens' Rights and Freedoms in Spain.

#### **Article 15. Social benefits and work for the asylum seekers.**

1. Asylum seekers, once the administrative go-ahead has been given to their application, and provided that they have not economic means, shall be able to benefit from social, educational and health services provided by competent Public Administrations, within its possibilities and budgetary availabilities.

2. The competent Organ may authorise the asylum seeker to work, in accordance with what is contemplated in the sets of laws regarding Aliens, based on the circumstances of the record and the person's in question situation.

3. Applications made by one-parent families, elderly people, physically challenged persons and other vulnerable population groups shall be deemed in accordance with guidelines foreseen in the international recommendations that preoccupy for standardisation of the treatment provided to these displaced or refugee groups. These collectives may be assisted since the moment of making the application pursuant to national or autonomic regulatory scheme

4. Asylum seekers under legal age and lacking protection shall be remitted to the competent services for minors' protection, acquainting with that fact the Attorney General's office. Legally assigned to the minor tutor, shall represent them for the time procedural steps concerning their application last. Asylum applications procedure shall be done according to the criteria contemplated in the International Conventions and Recommendations that apply to a minor asylum seeker.

#### **Article 16. Asylum seeker transfer to Spain.**

1. If the person concerned were in a situation of risk and had filed their application from a third country by the Diplomatic Mission or Consular Office, or in the hypothetical circumstances foreseen in article 4.2, the Asylum and Refuge Office may remit the case to the Interdepartmental Commission on Asylum and Refuge, in order to authorise their transfer to Spain for the time of record examination, after having obtained the corresponding visa, a safe-conduct or an authorisation to enter into the country, which shall be dealt with urgently.

2. The Asylum and Refuge Office will acquaint with the Interdepartmental Commission's agreement the Ministry of Foreign affairs and the Police General Presidency, which will transfer this document to the corresponding border post.

3. The asylum seeker who has been transferred to Spain due to their situation of risk, shall be acquainted with rights that correspond them, pursuant to Chapter I section II of this Regulation and which they may use within one month since the moment of their entry into Spain.

4. The competent Organ of the Ministry of Social Affairs shall adopt adequate measures so the public or private institution assigned for that purpose might receive the asylum seeker.

## **CHAPTER II**

### **Non-admission to a regular procedure.**

FIRST SECTION: ORDINARY PROCEDURE OF NON-ADMISSION TO A REGULAR PROCEDURE.

### **Article 17. Assessment of the causes of non-admission to a regular procedure.**

1. The Asylum and Refugee Office, if while assessing the content of the asylum application deems that in it there is clearly one of the circumstances contemplated in article 5.6 of Act 5/1984, on the Right to Asylum and the Refugee Status, will propose to the Ministry of Justice and the Interior, through the General President of Electing Processes , Aliens and Asylum, its no- admission to a regular procedure. The corresponding reasoned and individualised proposal shall go enclosed to a copy of the notification addressed to UNHCR representative in Spain with their report, if that is the case, that shall be issued at the latest within ten days since the receipt of the aforementioned notice.

2. The reasoned proposal of non-admission to a regular procedure shall be referred to the Ministry of Justice and the Interior at the latest 30 days after the application filing. The passage of more than 60 days since the application filing without its referring to the Ministry off Justice and the Interior, or without deciding upon it by the Organ, shall determine the administrative go-ahead of the application. In that case the corresponding body will provide to the asylum seeker an authorisation to remain in Spain, to what a reference is made in article 13.2 of this Regulation.

## SECOND SECTION: NON-ADMISSION AT BORDER

### **Article 18. Application criteria**

The procedure of non-admission at border shall be applied exclusively when, apart from when in a clear and terminant manner one of the circumstances for non-admission contemplated in article 5.6 of Act 5/1984, on the Right to Asylum and the Refugee Status occur, the Alien cannot meet the necessary requirements in order to enter into Spain in accordance with the current general legislation on Aliens.

### **Article 19. Asylum applications filling at border.**

1. An asylum application shall be comprehended as filed since the moment in which it is made in accordance to article 8.3.

2. The civil servant from the National Police Organ in charge of, or if that is the case, one from the Asylum and Refuge Office, before whom the asylum application shall be filed, will acquaint the person concerned with their rights pursuant to article 5 of this Regulation, and shall forward them a form in order to apply for asylum in accordance to article 8.2, likewise legal assistance and interpreter under article 8.4.

3. The asylum application form shall be filled and signed by the asylum seeker under article 8.3. Next, it will be referred, directly and immediately, to the Asylum and refuge Office, which shall transfer it to UNHCR and it will be decided, once examined the content of the application, the administrative go-ahead, or the Ministry of Justice and the Interior will be proposed its non-admission.

4. In both circumstances, the decision will be notified to the border post at the latest within 72 hours. If the asylum seeker entrance into Spain is authorised, they will be provided with documents in pursuant to article 13.2. In that case, procedural steps will follow Chapter III of this Regulation.

#### **Article 20. Non-admission procedure.**

1. In situations in which the Asylum and Refuge Office deems that one of the causes of non-admission to a regular procedure takes place, as they are contemplated in Act 5/1984, on the Right to Asylum and the Refugee Status, actions taken shall adopt to the following procedure:

- a) The Asylum and Refuge Office shall notify it immediately to the UNHCR representative in Spain, to whom it will send a copy of all received documents, being able to issue a report within 24 hours and to interview, if desired, the asylum seeker personally or by proxy using a competent lawyer. UNHCR's report which applies for the administrative go-ahead must be reasoned.
- b) The asylum seeker shall remain at the border post, exclusively in order to notify them the decision made upon their application, at the latest within 72 hours since its filing.
- c) The non-admission resolution shall be reasoned and individualised, acknowledging the concerned person with the possibility of either an re-examination of the

application or leaving the national territory in order to come back, provided that they wish so, to the origin country or a third State, acknowledging them, moreover, with the possibility to keep with the procedural steps through the Embassy of Spain in the corresponding country. In that case, the asylum seeker shall express their will to leave Spain in a written document, that should be signed before a lawyer, and, if it was necessary, assisted by an interpreter. They will be, likewise, granted this possibility in a circumstance in which the re-examination does not lead to an administrative go-ahead.

#### **Article 21. Re-examination procedure.**

1. If the concerned person, whose application has been turned down, asks for the re-examination in a 24-hour term since the notice of the resolution, the proceedings shall be as followed:

- a) The official in charge at the frontier shall provide them an adequate form, in which they may oppose to the causes of the non-admission and to formulate allegations that they deem appropriate.
- b) This application shall be decided upon by the Minister of Justice and the Interior. This decision shall be notified to the concerned person within two days at the latest since the moment of its making. In that case, previously to the resolution of the application and at the latest within 24 hours since its filing, the UNHCR representative in Spain shall be heard.
- c) UNHCR report in favour of the administrative go-ahead of an application to be re-examined, should be reasoned. In that case, if the concerned person expresses the intention to start a suit under administrative law, the procedure shall follow pursuant to articles 39.2 and 40.
- d) If the term foreseen to notify the decision on the re-examination application is over, and there has been no notice, it shall imply the leave to proceed for the application and as a consequence the authorisation to enter into the Spanish territory, with the continuation of the procedural steps regarding the application in accordance with Chapter III of this Regulation.

2. The period contemplated for the decision on the non-admission to a regular procedure filed in the frontier, and on the eventual re-examination application, cannot exceed seven days under article 5.7 of Act 5/1984, on the Right to Asylum and the Refugee Status.

### THIRD SECTION: EFFECTS OF THE NON-ADMISSION TO A REGULAR PROCEDURE

#### **Article 22. Effects of the non-admission to a regular procedure at border**

1. The non-admission to a regular procedure of the asylum application filed at border, in accordance with article 5.6 a), b), c) and d) of Act 5/ 1984, on the Right to Asylum and the Refugee Status, shall determine Alien's rejection at border, pursuant to article 17.1 of Act 5/ 1984, on the Right to Asylum and the Refugee Status.

2. Despite of what is contemplated in the previous section, the non-admission to a regular procedure of an asylum application at border, shall signify that the Minister of Justice and the Interior, by applying article 17.2 of Act 5/ 1984, on the Right to Asylum and the Refugee Status, is able to authorise Alien's entry into the country and their stay in there for a period no longer than six months.

3. Once the non-admission to a regular procedure is notified and the terms contemplated in article 5.7 of Act 5/ 1984, on the Right to Asylum and the Refugee Status are over, when either because of lacking the appropriate documents or delay in the transport possibilities, Alien's immediate refoulement was not possible, the Minister of Justice and the Interior shall authorise their entry in Spain in accordance with article 12.4 of the Public General Act of Parliament 7/ 1985 on Aliens Rights and Freedoms in Spain, a decision that, according to the circumstances, may go accompanied by the Precautionary measure; interim relief that are deemed adequate pursuant to the current legislation relating to aliens, informing about it, the legal authority.

4. In a hypothetical circumstance in which the non-admission to a regular procedure is due to the fact, that it is other State duty to re-examine the application, in accordance with article 5.6. paragraphs e) and f) of Act 5/ 1984, on the Right to Asylum and the Refugee Status, the Ministry of Justice and the Interior will authorise the

concerned person's entry in Spanish territory if, at the latest within 72 hours since the application filing, the appropriate groundwork with the corresponding States has not been done. All procedural steps are suspended until the answer is obtained from the State in question. Was this answer negative, the proposal of non-admission to a regular procedure has no effect, and the procedural steps will follow the regular proceeding.

**Article 23. Effects of non-admission to a regular procedure in the regular proceeding.**

1. The notice on the non-admission to a regular procedure of the asylum application filed in Spanish territory will be enclosed to the order of Alien's compulsory exit, within the time that they are indicated, or of their disfranchisement from the national territory, according to the particularities of each case, in pursuant to what is contemplated in articles 17.1 and 17.3 of Act 5/ 1984, on the Right to Asylum and the Refugee Status and in the current rules on Aliens.

2. Despite of what is contemplated in the previous section, if the inadmitted asylum seeker fulfils the necessary requirements in order to remain in Spain in accordance with the general Aliens' set of laws, or whether it was deemed the existence of humanitarian or public interest reasons pursuant to article 17.2 of Act 5/ 1984, on the Right to Asylum and the Refugee Status, the Minister of Justice and the Interior, after a proposal made by the Interdepartmental Commission on Asylum and Refuge, may authorise asylum seeker's stay in Spain, under article 31.3 of this Regulation, for a period no shorter than six months.

**CHAPTER III**

**Procedural steps of the asylum application.**

**FIRST SECTION: APPLICATION EXAMINATION.**

#### **Article 24. Procedural steps general rules.**

1. The person in question may file the documents and additional information that they deem convenient, as well as to make allegations that they estimate necessary in order to support the application at any moment, for the time procedural steps concerning their application last in the Asylum and Refuge Office. These proceedings shall be verified before the step of the hearing prior to the remittance of the file to the Interdepartmental Commission on Asylum and Refuge under article 6 of Act 5/ 1984, on the Right to Asylum and the Refugee Status.

2. The Asylum and Refuge Office may obtain, both from State Administration Organs and any other type of public agencies, as many reports as it deems convenient.

3. Likewise, to the file will be enclosed, if that is the case, the reports of UNHCR and the lawfully established associations, which have among their aims to advise and aid the Refugee.

4. All procedural steps regarding the file cannot take longer than six months. After this period and without deciding upon the filed asylum application, this can be deemed as dismissed, without prejudice to the Administration duty of resolving it purposefully. In circumstances in which the procedure takes place through Diplomatic Missions or Consular Offices , the six-month-long term shall count since application receipt in the Asylum and Refuge Office.

5. When the procedure is brought to a standstill caused by the asylum seeker, the Asylum and Refuge Office shall warn them that, once three months are over, the legal presumption of abandonment of action takes place. After the aforementioned period and without any steps taken by the concerned person to re-open the procedure, a file will be set for the documents, and the concerned person shall be given notice of it in the last known address.

#### **Article.25 Concerned persons hearing.**

1. Once the file is examined and immediately before composing the resolution proposal, the concerned persons shall be given notice of it, in order to be able

to, within ten days, allege and provide those documents and justifications that they deem appropriate.

2. This step of the hearing may be omitted if there are no more neither facts nor allegations or evidences than those provided by the concerned person himself, included in the report or necessary to be borne in mind at the moment of the resolution.

## SECOND SECTION: FILE RESOLUTION.

### **Article 26. Interdepartmental Commission Proposal.**

1. Once the examination is finished and verified, if that is the case, likewise the procedural step of hearing, the file shall be referred to the Interdepartmental Commission on Asylum and Refuge, which shall examine it, being able to, in the case of deeming it uncompleted, obtain from the instructing Organ the rectification of the observed defects or the incorporation to it complementary data or documents. Under these circumstances a new procedural step of hearing shall be opened, in order to give notice to the concerned person the aforesaid actions, with the possibility to make all necessary allegations.

2. The Interdepartmental Commission, when it deems the file to be complete, shall refer the corresponding proposal of a reasoned and individualised resolution to the Minister of Justice and the Interior.

### **Article 27. Competence to decide upon the file.**

1. In the cases in which the criterion on the proposal made by the Commission is shared, the competence to decide upon the file shall belong to the Minister of Justice and the Interior.

2. If the Minister of Justice and the Interior did not agree with the proposal of asylum granting or refusal, made by the Interdepartmental Commission on Asylum and Refuge, it shall refer the file to the Cabinet so it can adopt the appropriate resolution.

3. The Minister of Justice and the Interior's decision shall be reasoned and individualised, and it will contemplate, if that had been applied for, the scope of the Refugee

Status accorded to the appointed relatives in article 10 of Act 5/ 1984, on the Right to Asylum and the Refugee Status, without prejudice to the fact that type of family scope may be demanded subsequently if it had not been applied for at the time of the initial application or if there had been new circumstances.

4. If the relatives or a dependent spouse or child had chosen to remain in Spain pursuant to the current set of laws on Aliens, this situation shall be notified to the competent authorities in order to grant these persons the most favourable treatment according to the aforementioned legislation.

#### **Article 28. Resolution notification.**

1. The resolution of the asylum application file shall be notified to the concerned person, in accordance with article 58 of Act 30/1992 dated from 26 November on the Legal System of Public Administrations and Common Administrative Procedure.

2. The notification shall be delivered to the place appointed for that reason by the concerned person, and if there is no such a place, to the last address that is officially provided in their file. Likewise, the resolution shall be notified to the competent agency under article 4 and the NGO, which has under protection the concerned person, if that is the case.

3. When it is an application filed abroad, or whose asylum seeker is in another country, the notification shall be made through the appropriate Diplomatic Mission or the Consular Office.

#### THIRD SECTION: RESOLUTION EFFECTS.

#### **Article 29. Asylum Granting Effects.**

1. The favourable resolution on the asylum application in Spain, shall signify the acknowledgement of the Refugee Status pursuant to the Geneva Convention on the Refugee Status of the asylum seeker and their relatives or a dependent spouse or child, under article 27.3 and except under article 27.4 of this Regulation.

2. The competent authority shall issue an identity card which shall make possible for the refugee and their relatives or a dependent spouse or child to whom the family scope to

remain in Spain is acknowledged, likewise having labour-like, professional or trade activities, in accordance with the current legislation, if the Refugee Status is maintained.

3. Likewise, a travel document will be issued, in accordance with article 28 of the aforementioned Convention.

4. Had the asylum seeker filed their application in a Diplomatic Mission or a Spanish Consular Office, these Organs shall issue to the concerned person either the visa or the authorisation to enter Spain, as well as a travel document provided that is necessary, under article 16.

#### **Article 30. Social and economic benefits.**

If the refugee did not have work or economical resources to attend his, and his family basic needs, will be benefited with the provisions of Art. 15 of this rule and the general and specific programs established with the finality of facilitate his integration.

#### **Article 31. Refusal effects**

1. The refusal notification of the asylum application will be enclosed to the order for compulsory exit for the Alien, within a term established according to what is contemplated in a current legislation on Aliens. Once this term is finished, they may no longer take advantage of the benefits foreseen in article 15 of this Regulation, and it will be subjected to the file opening in order to disfranchise them from the country.

2. Nonetheless, had the Alien's asylum application been refused to, they may remain in Spain provided that they fulfil the necessary requirements in accordance with the General Set of Laws on Aliens. If the procedural steps had been left pending or the execution of the order for disfranchisement adjourned pursuant to the asylum application, the refusal shall mean the continuation of these proceedings.

3. When for humanitarian or public interest reasons the asylum seeker's authorisation to remain in Spain is justified, the asylum refusal shall be accompanied by a corresponding agreement pursuant to article 17.2 of Act 5/1984, on the Right to Asylum and the Refugee Status. The asylum abrogating resolution shall specify the status that is accorded to be granted pursuant to the current legislation on Aliens, which shall be proposed by the Interdepartmental Commission on Asylum and Refuge to the Minister of Justice and the

Interior. Likewise, it may recommend the Statue application for the displaced person in accordance with First Additional Provision.

## **CHAPTER IV**

### **Situation of the Acknowledged Refugees.**

#### **FIRST SECTION: RIGHTS AND DUTIES**

##### **Article. 32 General duty.**

Every Refugee has the duty to comply with the Constitution and Spanish legal system.

##### **Article. 33 Right to reside and work.**

1. Every acknowledged Refugee shall have the right to reside in Spain and to develop labour, professional and trade activities in accordance with the current legislation.

2. The necessary measures shall be forwarded to the Refugees whose documents or necessary certificates in order to exercise a right, particularly those which may make easier their integration in Spain, and which imply the intervention of the foreign Authorities in which they cannot lodge an appeal.

##### **Article. 34. Exception from the asylum family scope.**

1. In circumstances in which a marriage or a stable cohabitation take place subsequently to the acknowledgement of the Refugee Status, the concerned person will not be able to apply for the asylum family scope for those who depend on them, but a more favourable treatment pursuant to the current set of laws on Aliens.

2. The circumstance that is contemplated in the prior point does not signify that the relatives to which it refers to cannot seek the asylum in a different procedure, understanding that they fulfil all the requirements demanded in order to obtain it.

##### **Article. 35 Citizenship.**

The acknowledged Refugees may apply for Spanish citizenship, under article 22.1 of the Civil Code.

## SECOND SECTION: STATUTE PENALTIES AND CESSATIONS.

### **Article 36. Refugees disfranchisement and asylum annulment.**

Refugees disfranchisement and asylum annulment will be governed, respectively, by what is contemplated in articles 19 and 20 of Act 5/1984, on the Right to Asylum and the Refugee Status.

### **Article 37. Refugee Statute Cessation.**

1. The benefits from the Geneva Convention dated from 1951, from Act 5/1984, on the Right to Asylum and the Refugee Status and from this Regulation will cease automatically in the following circumstances:

- a) When the Refugee has become a citizen of Spain
- b) When the Refugee avails themselves of, voluntarily, the protection of their natal country.
- c) When they have settled down, voluntarily, in the other country, and therefore, there has been the transfer of responsibilities.

2. When, in accordance with, a substantial change in the circumstances of a determined country, it is deemed that the causes, which justified the acknowledgement of the Refugee Status of its nationals, or of a determined group of those nationals, have disappeared. In that case, the Interdepartmental Commission on Asylum and Refuge, once have heard the UNHCR, may accord the cessation of the Refugee Statute. This agreement shall be notified to the concerned persons at the time of their documents renewal, and a term shall be provided to them in order to make their allegations that they deem necessary.

3. In a circumstance contemplated in the prior subsection, the continuation of permanence in Spain shall be allowed under the General Set of Laws on Aliens, provided that the concerned person justifies in a reasonable manner the reasons to remain in Spain.

## **CHAPTER V**

### **File Re-examination and Reviews**

#### **Article 38. File re-examination.**

1. Persons who have been refused the asylum may apply in the Asylum and Refuge Office for a re-examination of their file if the circumstances foreseen in article 9 of Act 5/1984, on the Right to Asylum and the Refugee Status take place.

2. The Asylum and Refuge Office shall notify UNHCR the re-examination application, and assess if provided information justifies it, and if that is the case, the file shall be dealt with in the same manner as the initial application, and omitting those procedural steps, which were taken for the first application.

3. In a case in which it is deemed that none of the circumstances contemplated in article 9 of Act 5/1984, on the Right to Asylum and the Refugee Status, and within one month, General Chairman of Electing Processes, Aliens and Asylum, following the proposal made by the Asylum and Refuge Office, shall file the application for reviewing, acquainting with it the concerned person. Against this decision an ordinary appeal can be lodged within a month before the Secretary of State of the Interior.

#### **Article 39. Legal review.**

1. Resolutions contemplated in article 21 of Act 5/1984, on the Right to Asylum and the Refugee Status will conclude the administrative action and an appeal may be lodged against them before the jurisdiction for suits under administrative law, except in the case in which an application for re-examination has been made at border under article 5.7 of the aforementioned Act, in which it shall be comprehended that what concludes the administrative action is the decision made upon this application. Reviews shall be dealt with in a preferential manner.

2. When the UNHCR has notified in a favourable manner the administrative go-ahead of an asylum application at border and the asylum seeker has expressed their will of lodging an appeal before the jurisdiction for suits under administrative law against the non-admission, they should state it in a written form in a document that will go enclosed to the file. In that circumstance asylum seeker's entrance into the territory shall be authorised, likewise their permanence until the legal Agency in charge decides on the administrative measures suspension. Once the two-month-period is finished without lodging the appeal against the non-admission to a regular procedure by the concerned person, the effects of the aforementioned non-admission shall be applied, in accordance with article 23.

#### **Article 40. Temporary documents during the legal proceedings.**

Admission of the file re-examination application and appeal lodging together with the administrative measures suspension shall imply the renewal, or if that is the case, the issuing of the temporary documents for the asylum seeker until there is a binding resolution on whether there the Refugee Status is granted or refused.

### **ADDITIONAL PROVISIONS**

#### **First. Special treatment for the displaced persons.**

1. The Government, for humanitarian reasons or as a consequence of an international agreement or commitment, following a proposal made by the Spanish Foreign Office and once having heard the Interdepartmental Commission on Aliens, may welcome to Spain groups of displaced persons, who, as a consequence of conflicts or serious riots of a political, ethnical or religious nature have been obliged to abandon their country of origin or cannot remain in it. They shall be granted protection pursuant to this Additional Provision until the conflict is settled, or until there are favourable for their return conditions, or they voluntarily decide to move to a third country.

2. The reception procedure shall be co-ordinated by the Ministries of Foreign Affairs, Justice and the Interior and Social Affairs, being able to apply for co-operation from any other Department, likewise from International Organisations and the concerned Non-Governmental Organisations. For steps taken in the national territory of the aforementioned procedure the participation of the rest of the Public Administrations may be applied for as well.

3. The displaced persons to whom this Additional Provision refers to may benefit from the reception and integration programs foreseen for the Refugees in terms accorded by the Interdepartmental Commission on Asylum and Refuge. Nonetheless, they shall have the right to social benefits contemplated in articles 15 and 30 of this Regulation.

4. They will be provided with the documents of the Residence Permit, renewable on annual basis, with the prior report by the Interdepartmental Commission on Asylum and Refuge (hereinafter the ICAR), that will assess on a periodical basis, whether there are favourable conditions for the concerned persons return pursuant to article 37.2 and 37.3 of this Regulation. If, once three years since their entry in Spain have passed, the situation in the country that originated the flee has not changed, the Residence Permit validity for longer periods, according to what it is determined regarding the forward-looking statement on the conflict settlement. The competent Authority may authorise the holders of these permits to work, under the Set of Rules on Aliens.

5. Displaced persons shall have the right to the protection indicated in article 33 of the Geneva Convention on the Refugee Status for the time the situation persists. Likewise, any person member of a group that has been authorised to remain in Spain under a displaced persons-oriented programme may, as an Alien, apply for the acknowledgement of the Refugee Status pursuant to Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, amended by Act 9/1994, dated from 19 May, that this Regulation develops.

6. When the Minister of Justice and the Interior, nonetheless once refused or non-admitted to a regular procedure an asylum application, has authorised in accordance with article 17.2 of Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, amended by Act 9/1994, dated from 19 May, the Alien's permanence in Spain as they come from a zone, which is in a conflict or serious riots of a political, ethnical or religious nature, the regulation contemplated in this Additional Prevision shall be applied to the concerned persons.

## **Second. Emergency situations.**

1. When, as a consequence of a conflict or serious riots of a political, ethnical or religious nature, a considerable figure of persons get nearer to Spanish frontier or enter into

Spanish territory, in which situation Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, amended by Act 9/1994, dated from 19 May, and these of this Regulation shall prove to be insufficient, the services of Civil Protection from the Ministry of Justice and the Interior shall co-ordinate necessary steps in order to take care of their immediate basic human needs, especially of food, shelter and health care.

2. Once the emergency stage has passed, the Asylum and Refuge Office, together with Civil Protection and public and private institutions that it deems relevant, shall register the affected persons and assess the collective situation according to personal circumstances of each component.

3. The report that will be a result of this assessment shall be enclosed to the proposals made in the framework of Act 5/1984, dated from 26 March, on the Right to Asylum and the Refugee Status, amended by Act 9/1994, dated from 19 May, and shall be filed by the entitled person from the Asylum and Refuge Office to the Interdepartmental Commission on Asylum and Refuge for its analysis and administrative approval.

4. The final proposal that will be a result of these steps may include short-, medium- or long- term measures, regarding the concerned group, and it shall be referred to the Cabinet, passing through the Ministry of Justice and the Interior, that shall adopt a decision deemed to be the adequate one.

### **Third. Conditions for the appointment of lawyers collaborators with the UNHCR in the procedural steps.**

1. In order to fulfil efficiently the function contemplated in Act 5/198, on the Right to Asylum and the Refugee Status, in particular in the process of non-admission at border, the UNHCR may sign collaboration agreements with Non-Governmental Organisations, which have among their commitments to advise refugees and asylum seekers, likewise to appoint independent lawyers collaborators, specialised in that field, in accordance with criteria of professionalism and independence. The appointed lawyers shall receive from the UNHCR the adequate training, they shall perform under UNHCR's responsibility, and be subjected to the legally set incompatibilities.

2. The UNHCR shall acquaint the Interdepartmental Commission on Asylum and Refuge with the appointment of the lawyers collaborators, enclosed to a brief curriculum vitae with the indication, if that is the case, of the Non-Governmental Organisation that backs them. Likewise, the Commission will be notified about those lawyers collaborators who have ceased their collaboration with the UNHCR.

3. The lawyers collaborators appointments will be notified in an official manner to the competent authorities in each province, and especially to the border posts by the Asylum and Refuge Office.

4. In those provinces in which there is no UNHCR's lawyer collaborator, the Bar may sign agreements to settle the working order to that end.

### **TRANSITORY PROVISIONS**

**First.** Persons to whom the Temporary Permanence Card has been issued before this Regulation has entered into force and who are described in the categories defined in Act 5/1984, on the Right to Asylum and the Refugee Status and in this Regulation, may benefit from the provisions included in it, in particular from the First Additional Provision, since its implementation.

**Second.** To those who sought asylum before this Regulation entrance into force, the articles on proceedings, competence and effects of asylum refusal and non-admission to a regular procedure of this Royal Decree shall not be applied. The aforementioned applications shall be still governed by the Royal Decree 551/1985 dated from 20 February in what is not abolished by Act 9/1994 dated from 19 May.

**Third.** Persons, to which the Asylum Statue has been accorded previously to the implementation of Act 9/1994 dated from 19 May that amends Act 5/1984, on the Right to Asylum and the Refugee Status, shall maintain that status until the moment of their identity documents renewal, when the sole refugee document shall be issued. Those persons may, nonetheless, apply for the Travel Document under the Geneva Convention from 1951, since the entrance into force of this Regulation. Likewise, to whom the refugee status have been acknowledged previously, may apply for the documents contemplated in article 29.2 of this Regulation.

