

NATIONAL PRACTICES CONCERNING GRANTING OF NON-EU HARMONISED PROTECTION STATUSES

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National Practices concerning Granting of Non-EU Harmonised Protection Statuses

Spain

This National Report reflects the status quo of Spanish rules and practices concerning the granting of protection beyond the statuses already harmonised within the EU. The Report aims to describe the scenarios in which protection is granted in Spain under circumstances when refugee status and subsidiary protection status (as well as temporary protection) are clearly excluded.

Report produced by the European Migration Network,
written by the Spanish National Contact Point.

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Executive Summary

The Directive known as the Qualification Directive (*“Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”*)¹ has provided EU Member States with minimum common standards on international protection statuses for third-country nationals in situations of lack of protection and vulnerability: refugee status and subsidiary protection status².

Refugee status first emerged with the 1951 Geneva Convention; it is a status which the EU Member States share with many other third countries which are also States party to this Convention. However, since the harmonised Qualification Directive, EU Member States have been given a common interpretation of the Geneva definition of refugee and have established the minimum rights guaranteed by recognition of refugee status.

¹ Council Directive of 29 April 2004. OJ L 304/23 of 30 September 2004.

² In Spain, refugee status has been incorporated into domestic legislation since the first Asylum Law (Law 5/1984 of 23 March 1984), but subsidiary protection status was only incorporated through regulatory provisions and not in full. However, on 31 October 2009, the Official Spanish Gazette published Law 12/2009 of 30 October 2009 regulating the right of asylum and subsidiary protection (BOE 263: <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>). Said law sets out for the first time all the elements making up the definition of refugee (reasons for persecution, actors of persecution, etc.) in accordance with the Qualification Directive. Furthermore, it introduces for the first time, explicitly, clearly, and in an ordered manner, regulations on subsidiary protection, fulfilling and markedly exceeding the minimum rules established in this regard by the Qualification Directive. We shall return to this important new development throughout this Report.

Furthermore, the Qualification Directive introduces a more innovative and more uniquely European status on subsidiary protection. This status grants protection in three scenarios³ whereby the aforementioned Geneva Convention is not applied but international protection must be given. The reason lies in the fact that other international obligations, such as the rule of *non refoulement* –or non-return in any manner whatsoever of a person to a country where their life or freedom would be threatened– and the case law of the European Court of Human Rights, particularly that deriving from Article 3 of the European Convention on the Protection of Human Rights and fundamental freedoms (hereinafter ECrHR and ECHR respectively), necessitate harmony in respect of the minimum standards to be applied by EU Member States.

In addition to these two international statuses within the EU, there are also another two statuses. Rather than statuses, these should be referred to as ‘pre-statuses’: that of temporary protection⁴ and the minimum rights of all asylum applicants⁵.

As is clear, harmonised international protection statuses in the EU do not cover all protection scenarios, and for the moment, in the absence of EU rules in this regard, these scenarios remain subject to the sovereignty of each Member State. These would be scenarios of possible protection for reasons other than the eight grounds for protection already common to the protection systems of all EU Member States⁶.

³ Article 15 of the Qualification Directive lists the following three grounds as constituting serious harm likely to qualify for subsidiary protection: a) death penalty or execution; or b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

⁴ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. OJ L 212/12 of 7 August 2001. In Spain, this Directive was transposed through Royal Decree 1325/2003 of 24 October on the temporary protection system in the event of a mass influx of displaced persons. (BOE of 25 October 2003).

⁵ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in Member States. OJ L 31/18, of 6 February 2003. In Spain, this Directive was transposed through pre-existing regulations on asylum. However, matters which had not been formally transposed were transposed through the approval of the previously aforementioned very recent Law 12/2009 of 30 October 2009.

⁶ The five grounds listed in the Geneva Convention (well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion) and the three grounds specified in the Qualification Directive as qualifying for subsidiary protection (note 3 above: death penalty or execution, torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, and serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict).

The hypothetical and gradual harmonisation of said *other scenarios* of protection not yet harmonised in the EU (hereinafter, protection on humanitarian grounds or protection for exceptional reasons of a humanitarian nature) may be a somewhat complex task. Although the case law of the ECtHR assumes a shared starting point, for example as regards Article 8 of the ECHR, in all other respects the EU Member States demonstrate differences in their approaches when granting protection for exceptional reasons of a humanitarian nature (i.e. independently of the normal application of aliens general regulations).

However, there are scenarios that qualify for said humanitarian protection in a significant number of EU Member States. To a large extent, these similarities are due to Member States sharing the assumption that fundamental human rights are universal, indivisible and inalienable.

It is therefore no surprise that much of the domestic legislation of Member States bear similarities as regards scenarios of protection for exceptional reasons of a humanitarian nature, related to the following grounds:

- The refusal of an application for asylum (or for subsidiary protection) when the circumstances of the person (i.e.: age, responsible for minors, large family, etc.) or of the country of origin (armed conflict, widespread violence) mean that individual's return would be dangerous.
- The applicant is a victim of human trafficking.
- The applicant is a victim of gender-based violence (when none of the harmonised protection statuses have been applied).
- The applicant has a serious illness which cannot be treated in the country of origin.
- The applicant's stay in Europe for a prolonged period and loss of links with their country of origin.

This Report indicates how Spanish regulations and practices concerning granting of non-EU harmonised protection statuses do not differ greatly from those of other Member States, even when idiosyncrasies and uniquely Spanish characteristics are taken into account.

Therefore, and as explained above, Spanish residence permits can be granted for exceptional reasons of a humanitarian nature as follow:

- When, as proposed by the Inter-Ministerial Commission of Asylum and Refugee, the Ministry of the Interior authorises the stay in Spain of an applicant for international protection who does not qualify for refugee or subsidiary protection status, but whose individual circumstances qualify for authorisation to reside in Spain on humanitarian grounds (in view of that person's individual circumstances, e.g. age, health, dependents, etc.).
- When a foreign national is the victim of offences against workers' rights whenever the offence is committed by reason of racist, or anti-Semitic motives or another type of discrimination.
- When a foreign national is victim of domestic or gender-based violence.
- When a foreign national can prove his/her suffering from an illness which cannot be treated in the country of origin.
- When the foreign national can prove there is a risk to his/her safety and security upon the return to the country to obtain a visa.
- When a foreign national cooperates with the authorities in reporting certain crimes of which he/she is victim or witness, particularly when he/she is victim of human trafficking and denounces those responsible.

As can be verified, residence permits granted for exceptional reasons of a humanitarian nature set out in the domestic legislation of other EU Member States and those provided for in Spanish legislation do not differ greatly.

1. Introduction: Objective and methodology

The objective of this Report is to consider the status quo of Spanish rules and practices concerning the granting of protection beyond the statuses already harmonised within the EU. The Report aims to describe the scenarios in which protection would be granted in Spain under circumstances when refugee status and subsidiary protection status (as well as temporary protection) are clearly excluded. Permits granted for exceptional circumstances to immigrants staying illegally due to having social, family or employment roots are also beyond the scope of this Report.

Two points should be made at this stage:

- The first relates to the fact that in Spain, protection for exceptional reasons of a humanitarian nature falls within a hybrid category between asylum and aliens legislation, not fitting exclusively in either category of regulations and practices. Therefore, it is difficult to understand and explain this type of protection in a succinct manner.
- The second point has to do with the current reform of Spanish regulations on alien affairs underway at the time of writing this Report, and the important fact of the approval in Spain of a new asylum law (the already mentioned Law 12/2009 of 30 October 2009).

As we have mentioned, on 31 October 2009 the new Law governing the right to asylum and subsidiary protection has been published in the Official Spanish Gazette,⁷ which replaces the Asylum Law in force until that date⁸.

Similarly, a new Law has just been approved⁹ to reform Organic Law 4/2000 of 11 January 2000¹⁰ on the rights and freedoms of foreign nationals in Spain and their social integration. This text is likely to have a stronger impact on public opinion than that relating to the right of asylum and subsidiary protection, since Spain is a Member State with a high number of foreign nationals which has grown exponentially in the past decade, though it is also a Member State with a relatively low percentage of asylum applicants.

Definitely, the fact that protection statuses on humanitarian grounds lie somewhere between asylum and aliens regulations and the important legislative changes both with

⁷ The definitive text includes contributions from organisations to which it was sent for consultation and reports: the Socioeconomic Council, the Sectoral Immigration Conference (in which the Spanish autonomous communities participate), the Interministerial Commission for Alien Affairs, the Tripartite Labour Commission on Immigration, the General Council of the Judiciary, the Fiscal Council, the Forum for the Integration of Immigrations and, finally, the Council of State. Certain amendments have subsequently been incorporated, such as those from the Spanish Congress of Deputies and the Senate. See: Law 12/2009 of 30 October governing the right to asylum and subsidiary protection. BOE 263 of 31 October.

⁸ Law 5/1984 of 26 March 1984 governing the right of asylum and refugee status, as amended by Law 9/1994 of 19 May 1994. (See full version at: http://extranjeros.mtas.es/es/NormativaJurisprudencia/Nacional/RegimenAsilo/documentos/Refundido_Asilo_94.pdf. Visited on 28 August 2009.

⁹ See the final text already published at the Official Journal of Spanish Parliament (Cortes Generales) of 7 December 2009; 121/000032 Draft Organic Law on the rights and freedoms of foreign nationals in Spain and their social integration. (to be published at the Official Journal of the State, BOE).

¹⁰ Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreign nationals in Spain and their social integration (BOE 10 of 12 January) as drafted by Organic Law 8/2000 of 22 December (BOE 307 of 23 December), Organic Law 11/2003 of 29 September (BOE 234 of 30 September), and Organic Law 14/2003 of 20 November (BOE 279 of 21 November). Modified by Judgment 236/2007 of 7 November of the Constitutional Court (BOE 295 -Supplement- of 10 December), http://www.mir.es/SGACAVT/extranje/normativa_basica.html. Visited on 28 August 2009. Hereinafter, LOEX.

regards to asylum and alien affairs undertaken by Spain, mean that it is essential to bear in mind aliens regulations currently in force (LOEX and its implementing regulations¹¹) alongside the Draft Law to reform the Law on Alien Affairs, and the new Law on Asylum and Subsidiary Protection (Law 12/2009), the implementing regulations of which will be formalised over the next six months.

That is to say, for the purposes of this Report we can only describe the regulations on alien affairs currently in force, subject to amendment, and a new Law on Asylum which does not yet have implementing regulations; therefore, the regulations of the previous Law on Asylum continue to be in force wherein they do not contradict the new Law 12/2009.

A further question must be added to those already posed: as in many other EU Member States, the jurisprudence of the Spanish Supreme Court, when ruling on matters of dispute as the court of last instance, does so in application and interpretation of domestic regulations which are sometimes no longer in force, having been modified or repealed. This inevitable deviation from the norm is even greater for matters related to the process of harmonising certain rules on immigration and asylum in the EU and as a corollary of the ongoing, complex process in which the EU Member States and institutions are involved.

The following heading, having mentioned refugee and subsidiary protection statuses in Spain, lists the different scenarios in which Spanish legislation provides for the granting of a residence permit for exceptional reasons of a humanitarian nature. These scenarios are provided for in asylum legislation but, as will be seen below, are principally developed and explained in Article 45 of the RELOEX.

In this regard, the doctrine established by the Spanish Supreme Court in its Ruling of 10 January 2007 is of interest. In said judgment, the court highlighted the fact that Spanish regulations on residence permits for exceptional circumstances as set out in Article 45 of the RELOEX (the circumstances of which are written and described in detail in this Report), contain “an exhaustive but not exclusive list” of the cases in which the granting of said permit for exceptional circumstances is possible¹². Therefore, for the Supreme Court, Article 45 of the RELOEX sets out the majority of the situations in which it is possible

¹¹ Royal Decree 2393/2004 of 30 December 2004 approving the Regulations of Organic Law 4/2000 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration (BOE 6 of 7 January), as drafted by Royal Decree 1019/2006 of 8 September (BOE 228 of 23 September), by Royal Decree 240/2007 of 16 February (BOE 51 of 28 February), and by Royal Decree 1162/2009 of 10 July (BOE 177 of 23 July) http://www.mir.es/SGACAVT/extranje/normativa_basica.html. Visited on 28 August 2009. Hereinafter, RELOEX.

¹² Supreme Court Ruling of 10 January 2007, RC 39/2005. Also, Supreme Court Ruling of 8 January 2007, RC 38/2005; Supreme Court Ruling of 9 January 2007, RC 40/2005.

grant a permit for exceptional circumstances, but not all. As proof of this, the Supreme Court alludes to other residence authorisations provided for in different articles of the RELOEX; for example, Article 94.2 relating to minors or the First Additional Provision, paragraph four.

2. Protection statuses in Spain

2.1. Refugee and subsidiary protection status in Spain

a) Refugee status

With the recent approval of Law 12/2009 of 30 October, Spanish legislation concluded what is known as the First Phase of the Common European Asylum System. This new law reflects the most recent interpretations and criteria that have emerged in jurisprudence of the Court of Justice of the European Communities or the European Court of Human Rights.

The Preliminary Title determines that the content of international protection shall consist of two statuses: that corresponding to the right of asylum (or recognition of refugee status) and that corresponding to subsidiary protection.

Perhaps the most innovative aspect of Law 12/2009 is the incorporation of gender as a possible reason qualifying for recognition of refugee status. Thus, Article 7 concerning “reasons for persecution”, and the explanations on race, nationality or social group, adds: *“Similarly, depending on the circumstances in the country of origin, this includes persons fleeing their countries of origin due to well-founded fears of suffering persecution for reasons of gender and/or age, without these aspects by themselves qualifying for application of this Article”.*

In this regard, it is important to remember that the Twenty-Ninth Additional Provision of Organic Law 3/2007 of 22 March 2007 on the equality of men and woman¹³ added a new Third Additional Provision to the previous Asylum Law, by virtue of which recognition of refugee status in Spain would be applied to foreign women fleeing their home countries due to well-founded fears of persecution for reasons of gender. In a progressive legal ruling, on 13 January 2009 the Spanish National Court resolved to grant refugee status to a woman who had suffered ongoing and prolonged abuse by her husband. The

¹³ See the text of the law at: http://www.boe.es/aeboe/consultas/bases_datos/doc.php?coleccion=iberlex&id=2007/06115. Visited on 28 August 2009.

National Court considered this a case of gender-based persecution under the Geneva Convention¹⁴.

Furthermore, Law 12/2009 details for the first time the elements making up the definition of refugee: persecution, reason for persecution, actors of persecution, etc.

In summary, the new Law 12/2009 more than adequately fulfils each and every one of the aspects of the Qualification Directive and other Community Directives on asylum not yet transposed into domestic legislation. It must be emphasized that, despite this delay in transposing the Directive in full, both the Government and Spanish judges and courts have in practice been applying the Qualification Directive and all its nuances, particularly since enjoying direct application after its transposition period ended.

b) Subsidiary protection

Law 12/2009 dedicates a Chapter to subsidiary protection status. It should be stressed that this law governs subsidiary protection, granting for these three grounds for international protection (cf. note 3 above) a similar status to that of refugee in respect of the rights it recognises. This position of Spanish legislation on asylum far exceeds the minimum standards set out by the Qualification Directive. We must applaud the decision of the Spanish legislator who said, *"beyond the differences which may exist between the grounds that justify either status (refugee or subsidiary protection), the common aim of both is that the beneficiaries are protected from risks to their lives, person or freedom, where such protection cannot be found in their countries of origin"*¹⁵.

The legislation on asylum in force until now did not adequately transpose subsidiary protection¹⁶. However, the Inter-Ministerial Commission of Asylum and Refugee has been following the wording and teleological meaning of the Qualification Directive as regards subsidiary protection, as set out in said Directive, for some time. However, with the new Law 12/2009, Spain is now transposing more precisely and fully the matters not yet fully incorporated into Spanish law on subsidiary protection, from both the Qualification Directive (2004/83/EC) and Directive 2005/85/EC (Asylum Procedures Directive) and also from Chapter V of Directive 2003/86/EC on the right to family reunification of refugees and beneficiaries of subsidiary protection.

¹⁴ National Court, Contentious-Administrative Division, Section 8, Judgment of 13 January 2009, Rec. 1528/2007 Cf. Diario La Ley [law bulletin], Nº 7188, Sección Jurisprudencia [jurisprudence section], 3 June 2009, Year XXX.

¹⁵ Statement of Grounds for Law 12/2009 of 30 October 2009.

¹⁶ See the Ruling of the European Court of Justice (ECJ) of 9 July 2009, in Case C-272/08.

No further explanations on refugee or subsidiary protection status are necessary, since this Report must refer to *non-EU harmonised* protection statuses.

2.2. Non-harmonised protection statuses: Spain

a) Asylum legislation

Article 31.4 of the implementing regulations for the Asylum Law¹⁷ states:

“On humanitarian grounds distinct from those indicated in the previous paragraph (on subsidiary protection), the Ministry of the Interior, as proposed by the Inter-Ministerial Commission on Asylum and Refuge, may authorise the interested party’s stay in Spain and, where necessary, recommend the granting of a residence permit in accordance with the provisions of Section 3 of Article 45 of the Implementing Regulations of Organic Law 4/2000 of 11 January 2000 on foreigners’ rights and freedoms in Spain and their social integration, subject to the concurrence of said humanitarian grounds in the asylum application. Said authorisation to remain shall take the form of a permit of stay”¹⁸.

b) Aliens legislation

Article 31.3 of the LOEX establishes:

“The Government may grant a temporary residence permit (...) on humanitarian grounds, in cooperation with judicial authorities or under other exceptional circumstances determined in regulations. In these circumstances the visa will not be required” (this paragraph has been amended by Organic Law 14/2003 of 20

¹⁷ Note that this is the implementing regulations for the Asylum Law amended by Royal Decree 2393/2004 of 30 December 2004. Cf. note 11 above. Said regulations continue to be in force insofar as it does not contradict the new Law 12/2009 and until the approval of said Implementing Regulations for the new Law.

¹⁸ Finally, paragraph 5 of Article 31 of the implementing regulations for the Asylum Law states: *“If when the residence or stay permit granted comes to an end the reasons for granting it still apply, the interested party may request, as appropriate, renewal of the temporary stay or residence permit. Where necessary, and in any case in circumstances included in paragraph 3 of this Article, the competent authority shall request a report from the Inter-Ministerial Commission of Asylum and Refuge as to said validity. After three months from the date of said request for renewal, and if no express ruling has been pronounced, the renewal will be understood as having been granted through consent by silence. Alternatively, and provided the requirements established to that effect have been met, with the exception of the visa, the interested party may obtain a residence and work permit for a duration corresponding to the time that he/she has resided and, where applicable, worked legally in Spain”*. (As drafted in Royal Decree 2393/2004 of 30 December).

November. Nevertheless, the final text of the 2009 reform of the LOEX does not change article 31,3 at all).

Article **45 of the RELOEX** sets forth the legal provisions of Article 31.3 above, with the following wording:

“Temporary residence permits in exceptional circumstances

1. Pursuant to Article 31.3 of Organic Law 4/2000 of 11 January, in view of the concurrent **exceptional circumstances**, a temporary residence permit may be granted to foreigners in Spain in the scenarios described in this Article, provided there is no bad faith on behalf of the applicant.
2. (...)
3. (...) Similarly, **a temporary residence permit may be granted in the instances set out in Articles 31.4 and 34.1 of the implementing regulations¹⁹ of Law 5/1984 of 26 March governing the right to asylum and refugee status.**
4. **A permit on humanitarian grounds may be granted in the following circumstances:**
 - a) **To foreign nationals who are victims of offences described in Sections 311 to 314 of the Penal Code, of offences with the aggravating circumstances of racist or anti-Semitic motives or other type of discrimination described in Article 22.4 of the Penal Code, or offences for violent conduct carried out in a domestic environment, pursuant to Law 27/2003 of 31 July governing the protection Order for victims of domestic violence, provided a judgment has been pronounced for such offences.**
 - b) **To any foreigners who can prove they are suffering from a serious illness requiring specialized healthcare that cannot be accessed in their country of origin, and the fact that interrupting or not receiving such healthcare would entail a serious risk to their health or life. In order to prove necessity, a medical report issued by the corresponding health authority will be required.**
 - c) **To any foreigners who can prove that returning to their country of origin or from where they have come for the purposes of applying for the relevant visa would place their safety or that of their family in danger, and who meet all other requirements for obtaining a temporary residence permit or a work and residence permit.**

¹⁹ This reference must be considered in relation to the transcription of Article 31.4 of the Implementing Regulations of the Asylum law.

5. Without prejudice to the previous paragraphs, **a permit may be granted to persons who cooperate with the administrative, police, tax or judicial authorities, or when there are reasons of public interest or national security** justifying the need to authorise their residence in Spain. For these purposes, said authorities may request that the competent bodies grant a residence permit or a residence and work permit to a person under any of these circumstances”.

2.3. Description of non-harmonised protection scenarios: Spain

- a) **First Scenario:** Protection proposed by the Inter-Ministerial Commission of Asylum and Refuge **on humanitarian grounds** (Article 31.4 of the Implementing Regulations on the Asylum Law and Article 45.3 of the RELOEX).

Protection is proposed by the Inter-Ministerial Commission of Asylum and Refuge (CIAR) after having studied the case and taken the view that recognition of refugee status or subsidiary protection status is not necessary. Authorisation to stay is given by the Ministry of the Interior, which recommends granting a residence permit pursuant to Article 45.3 of the RELOEX. In accordance with the above, Article 45.3 of the RELOEX sets out proposals on humanitarian grounds given by the Inter-Ministerial Commission of Asylum and Refuge.

The CIAR normally proposes this protection when it considers that return to country of origin would be dangerous (e.g. due to war or widespread violence which although does not qualify for subsidiary protection nevertheless puts the life or freedom of the person at risk) or on the basis of humanitarian grounds (in view of the person's individual circumstances, e.g. age, health, dependents, etc.).

- b) **Second Scenario:** Protection on humanitarian grounds given to **foreign nationals who are victims of offences with the aggravating circumstance of racism, anti-Semitism or other type of discrimination** (Article 45.4 a) of the RELOEX).

A temporary residence permit may be granted due to exceptional circumstances of a humanitarian nature to foreign victims of offences against workers' rights (working conditions which restrict or withdraw their rights, etc.) when the offence committed had racist or anti-Semitic motives or another type of discrimination relating to ideology, religion or the beliefs of the victim, the person's ethnicity, race or nation, sex or sexual orientation, or any illness or disability.

This scenario of Article 45.4 a) of the RELOEX has recently been made explicit through Instructions 05/2008 of 19 September 2008 concerning scenarios where foreign

persons have been victims of specific offences²⁰. Likewise, the Second Instruction, after listing the requirements necessary for obtaining said authorisation, and although Article 46.3 of the RELOEX indicates that the victims of said offences must have obtained a conviction, provides for the alleged victim's request to be admitted for processing as an exception, in the following instances: provided precautionary measures have been agreed by the judicial authority in order to protect the victim or there is a report from the Public Prosecutor indicating that there is evidence to suggest the applicant is victim of one of these offences. Furthermore, it sets forth that should there be any doubt in the interpretation of this report, the opinion of the Public Prosecutor should be sought. Despite the caution described, the residence permit will only be granted once a conviction has been brought for the offence reported.

C) Third Scenario: Protection on humanitarian grounds *to foreign nationals who have been victims of domestic or gender-based violence*²¹.

These grounds for humanitarian protection, likewise with the previous, are listed in Article 45.4. a) of the RELOEX.

They have recently been developed in detail through several of the Instructions 05/2008 of 19 September 2008²² of the General Directorate of Immigration. The Second Instruction, in the same way as for the scenario described above, indicates that, exceptionally, even if there has not yet been a conviction, the alleged victim's application may be accepted if other precautionary measures have been agreed by the Judicial Authority or there is a Report from the Public Prosecutor indicating that there is evidence to suggest that the applicant is a victim of gender-based violence.

Although the residence permit will only be granted once a conviction has been brought for the offence of violent conduct carried out in a domestic environment, the fact of not having the residence permit would not be an obstacle to that person's access to protection programmes, or to education or training activities that would be to his/her benefit.

²⁰ Instructions DGI/SGRJ/05/2008, concerning scenarios where foreign persons have been victims of specific offences, including those of violent conduct carried out in a domestic environment or of gender-based violence. See the instructions at: http://extranjeros.mtin.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/InstruccionesDGI/documentos/2008/INSTRUCCION_10-2008.pdf. Visited on 26 August 2009.

²¹ This regulatory rule must be applied by interpreting it together with Articles 23 of Organic Law 1/2004 of 28 December on Comprehensive Protection Measures against Gender-based Violence (BOE 313 of 29 December 2004) and Instruction 2/2005 of the State Prosecution Service of 2 March on accreditation by the Public Prosecutor of gender-based violence situations. <http://www.migualdad.es/mujer/violencia/docs/A42166-42197.pdf> (Visited on 31 August 2009).

²² See note 20 above. There are a total of five instructions.

The Third Instruction refers to the Renewal of residence and work permits for victims of gender violence. The Third Instruction reiterates that under Article 21.2 of Organic Law 1/2004 on Full Protection Measures against Gender Violence²³, the foreign woman's time of withdrawal from an employment contract when her contract has been annulled for reasons of gender-based violence is counted as a contribution period for the purposes of Social Security and unemployment allowances.

Furthermore, according to Article 38.3 b) and c) of the LOEX, the work permit for salaried employment shall be renewed when the worker receives a contributory unemployment benefit or public welfare benefit designed to aid his/her social integration or integration into the labour market. In this regard, the Third Instruction sets out that these benefits include those received by a victim of gender-based violence as economic benefits via a single payment in the 24 months prior to the request to renew the residence and work permit for salaried employment.

Furthermore, Article 21.5 of Organic Law 1/2004 of 28 December on Comprehensive Protection measures against Gender-based Violence is also relevant²⁴. Said provision sets forth that employees who are victims of gender-based violence who end their working activity in order for their protection or right to full social welfare to take effect, will have their obligation to make contributory payments suspended for a period of six months, and will be considered to have made contributions for the purposes of Social Security benefits, and their situation will be considered as assimilated to the Social Security system.

The Fourth Instruction relates to residence and work in the case of victims of gender-based violence. It states that in cases where an employer presents a request for a residence and work permit for the salaried employment of a victim of gender-based violence who is already living in the country legally, or the legally resident victims themselves aim to work as employees (or hold a residence and work permit), the principles of speed and expediency of office included in Articles 74 and 75 of Law 30/1992 of 26 November on the Legal Framework of the Public Administrations and of Common Administrative Procedures shall be respected, in order to facilitate the victim's integration into the labour market, and wherever possible, priority will be given to the processing of these permits by virtue of Article 74.2 of said Law 30/1992.

Finally, the Fifth Instruction refers to female foreign nationals who are victims of domestic or gender-based violence and living in the country illegally. Said Fifth

²³ *Idem.*

²⁴ *Idem.*

Instruction refers to Instruction 14/2005 of 29 July, of the State Secretariat for Security²⁵ setting out the action to be taken for cases in which a female foreign national living in the country illegally presents oneself at a police station to report gender-based violence: e.g. which actions will be granted priority (welfare and protection measures that the complainant requires), etc.

- d) **Fourth Scenario:** Protection on humanitarian grounds *to foreign nationals who can prove that they suffer from a serious illness that cannot be treated in the country of origin.*

A medical report is required, and the illness must be supervening and serious in nature. One of the scenarios that have qualified for the possible application of this provision is the case of persons with AIDS. In application of this provision, these and other foreign patients may obtain a residence permit by reason of the illness, provided they have a medical report confirming the illness, that it is supervening and that medical treatment of AIDS is impossible in their country of origin²⁶.

- e) **Fifth Scenario:** Protection on humanitarian grounds *to foreign nationals who can prove there is a risk to their security on return to their country in order to obtain a visa.*

This is an authorisation for temporary residence for exceptional circumstances of a humanitarian nature granted to foreign nationals who can prove that returning to their country of origin to request a visa would put their security or that of their family at risk (for reasons other than those set out as qualifying for refugee status or subsidiary protection status).

- f) **Sixth Scenario:** Protection for *foreign nationals who cooperate with the administrative, police, tax or judicial authorities, or when it is in the public interest or interests of national security* who justify their need for being authorised to reside in Spain.

This scenario includes temporary residence permits given to foreign victims of trafficking who report their perpetrators. This scenario should be considered with

²⁵ State Secretariat for Security Instruction 14/2005 of the State Secretariat for Security on action to be taken at police stations concerning female foreign nationals who are victims of domestic or gender-based violence and live in the country illegally. http://www.icam.es/docs/ficheros/200602010020_6_4.pdf (web page of the Professional Association of Lawyers of Madrid, visited 30 August 2009).

²⁶ Cf. NAVARRO FERNÁNDEZ, M., SÁNCHEZ MORCILLO, J.P., in *La prevención de la infección VIH/SIDA en la población inmigrante* [prevention of HIV/AIDS infection among immigrants], Ministry of Health and Consumer Affairs, Madrid, 2006.

reference to Article 59 of the LOEX²⁷ and Article 117 of the RELOEX on “Cooperation against organised criminal networks”²⁸. This residence authorisation for cooperation with the authorities transposes the Directive on residence permits for victims of human trafficking²⁹.

Cooperation with non-police, administrative authorities is also governed by Article 45.5 of the RELOEX, which has been further developed through Instruction DGI/SGRJ/06/2006 on temporary residence authorisation in exceptional circumstances following cooperation with the work and social security inspectorate³⁰. According to the instruction, after said cooperation a punitive administrative case file must be opened, the facts of which are to be investigated by the Employment and Social Security Inspectorate. If the facts constitute an offence, the cooperation given may be continued with the tax or judicial authorities. Foreign nationals who provide said cooperation must be the victim or a witness of the offence. The cooperation may consist of reporting the offence or providing a witness statement or material evidence.

3. Mechanisms, procedures and guaranteed rights

3.1. Procedures and rights recognised in Spain for EU harmonised statuses (refugee and subsidiary protection status)

In Spain, the procedures and guaranteed rights for refugee and subsidiary protection status set out in the new Law 12/2009 uphold and exceed the minimum requirements

²⁷ Said article 59,1 sets out that the foreign national who has entered Spain illegally or who is living or working in Spain illegally, having been a victim, injured party or witness of illegal smuggling of human beings, illegal immigration or illegal smuggling of workers or exploitation through prostitution taking advantage of vulnerability, may be exempt from administrative responsibility and will not be expelled if they report the perpetrators or facilitators to the competent authorities, or if they cooperate and collaborate with the competent police officers on immigration matters. Article 59.1 has not changed substantially after the reform of the LOEX <http://www.icam.es/web3/grupos/verInformacion.jsp?id=200903030022&canal=ex&cat=191&subCat=1089&subHij=0&pagina=1&princ=true&num=1>. Visited on 7 December 2009.

²⁸ Article 117.1 of the RELOEX on cooperation with organised criminal networks sets out that “*the competent governing authority may grant, at the choice of the foreign national and in order to facilitate his/her social integration, a temporary residence permit for exceptional circumstances pursuant to Article 31 of Organic Law 4/2000 and a work permit or facilitate his/her return to the country of origin*”.

²⁹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of human trafficking or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. OJ L 261/19 of 6 August 2004.

³⁰ Instruction DGI/SGRJ/06/2006, of 4 July 2006, on temporary residence authorisation in exceptional circumstances following cooperation with the employment and social security inspectorate. http://www.icam.es/docs/ficheros/200602010020_6_8.pdf 2006. Visited on 26 August 2009.

imposed by existing Community Directives. We appear to have truly exemplary legislation on asylum in terms of the protection given to those entitled to subsidiary protection: the rights guaranteed to beneficiaries of subsidiary protection are comparable to those guaranteed to refugees; exceeding the requirements of EU law and ahead of the protection given in domestic legislation of many other Member States. What is particularly noticeable is that in both scenarios those given protection receive a long term residence permit in Spain (Article 36.1.c) of Law 12/2009).

However, although this Report focuses on non-EU harmonised forms of protection, we shall explain the mechanisms to be complied with and rights guaranteed for the six scenarios described in the previous heading.

3.2. Procedures and rights recognised in Spain for non-EU harmonised protection statuses

Undoubtedly, the principal characteristic of all non-EU harmonised protection statuses is that the temporary residence permit qualified for is issued without the need for a visa. The initial residence permit granted in all scenarios and its possible renewals will be valid for one year.

Another common characteristic is that the work permit will never be dependent on the national employment situation (in some scenarios the work permit is linked to the residence permit, whereas in others, as shall be seen below, the interested party must apply for it).

a) Requirements

The request for a temporary residence permit for exceptional circumstances in any of the scenarios described above must be accompanied by the following documents, which must be submitted within one month:

- A valid passport or travel document with a minimum validity period of four months. This requirement may be exempted in the terms set out in the decision of the Ministry of the Interior when the residence permit relates to asylum legislation (First Scenario).
- Documentary evidence of falling within one of the residence scenarios in exceptional circumstances.

- In scenarios where it is required, an employment contract of a minimum duration of one year signed by the worker and the employer whose effects will be conditioned to the entry into force of the residence and work permit applied for.

b) Competent authority

The competent authority for resolving disputes will depend on the different scenarios of temporary residence granted for exceptional circumstances.

If authorisation is based on cooperation with police, tax or judicial authorities, and in cases of national security, the State Secretariat for Security shall be the competent authority. In cases of cooperation with other administrative authorities and for reasons of public interest it will be the State Secretariat for Immigration and Emigration.

In scenarios of victims of offences against workers with the aggravating circumstance of racism, and of victims of gender-based violence, said authorities may delegate powers to governmental Sub-Delegations, or to Governmental Delegations in the single-province autonomous communities. Similarly, in the case of victims of offences against workers, this power may be delegated to the General Directorate of the Police and the Guardia Civil or to the General Commissariat for Alien Affairs and Borders.

c) Renewal and suspension

Holders of permits granted by the State Secretariat for Security or by the delegated authority may renew the permit, provided the competent authorities have assessed that the grounds for granting it still apply. Should the authorities conclude that the grounds for granting the permit no longer apply, they may request a residence permit or a residence and work permit, provided the requirements set out by this regulation to obtain the same have been met, with the exception of the visa.

Renewals of permits for exceptional circumstances granted for the reasons set out in paragraph 3 of Article 45 of the RELOEX (First Scenario) shall be governed by the applicable regulations on asylum and subsidiary protection.

In permits granted for the remaining scenarios, renewal will require fulfilment of compliance pursuant to the general legislation on alien affairs (Article 98 of the RELOEX).

4. Statistics

Spain does not yet have statistics which itemise the different reasons which are grounds for granting temporary residence permits for exceptional circumstances, object of this study.

As has been highlighted in previous paragraphs, of the six scenarios examined, only the first fits within asylum legislation and even then it is immigration regulations that govern the issuance of the permit, through the decision of the Ministry of the Interior, at the proposal of the CIAR.

Annex I to this Report presents the official statistics on applicants for international protection in Spain, and refugee and subsidiary protection statuses granted.

The tables presented below show that in 2004 figures or data on subsidiary protection were inexistent. This is due to the fact that, at the time, Spain did not separate the figures on subsidiary protection from the figures on protection on humanitarian grounds (thus, the figure shown - 163 - does not distinguish between Article 31.3 of the Asylum Regulations – subsidiary protection – and Article 31.4 of said Regulations – humanitarian protection).

The tables presented below include statistics for the period 2004-2007³¹:

- Evolution of asylum applicants over time
- Main nationalities of asylum applicants
- Asylum applicants by sex and year
- Asylum decisions by year proposed by the CIAR (Inter-Ministerial Commission of Asylum and Refuge)

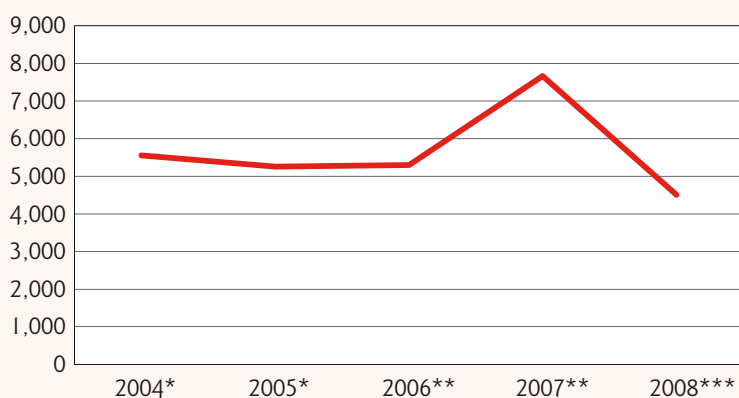
³¹ Data on 2008 only reflect the total calculation of asylum applications, without itemisation by category, since no further details were published at the time of preparing this Report. These are only indicated in paragraph 1.1. Evolution of asylum applicants over time.

1.1. Evolution of asylum applicants over time

	2004*	2005*	2006**	2007**	2008***
Asylum seekers	5,553	5,257	5,297	7,664	4,510

Source: * Ministry of the Interior: Ministry of the Interior annual statistical report. ** Ministry of the Interior: Statistical Report of the Asylum and Refugee Office. *** Eurostat

Asylum applicants



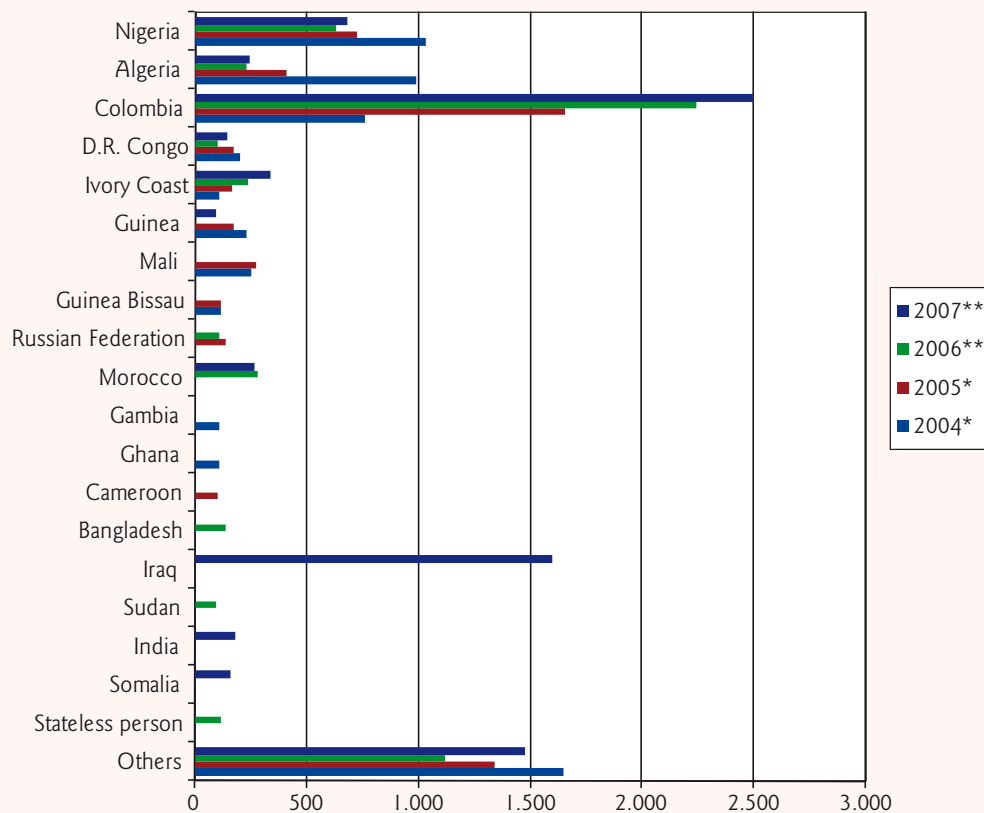
Source: * Ministry of the Interior: Ministry of the Interior annual statistical report. ** Ministry of the Interior: Statistical Report of the Asylum and Refugee Office. *** Eurostat

1.2. Main nationalities of asylum applicants 2004-2007

2004*		2005*		2006**		2007**	
Total	5,553	Total	5,257	Total	5,297	Total	7,664
Nigeria	1,029	Colombia	1,656	Colombia	2,239	Colombia	2,498
Algeria	991	Nigeria	726	Nigeria	632	Iraq	1,598
Colombia	760	Algeria	406	Morocco	281	Nigeria	680
Mali	253	Mali	273	Ivory Coast	236	Ivory Coast	336
Guinea	228	Guinea	173	Algeria	230	Morocco	263
D.R. Congo	203	D.R. Congo	170	Bangladesh	137	Algeria	247
Guinea Bissau	114	Ivory Coast	162	Stateless person	117	India	178
Ivory Coast	110	Russia	138	Russia	110	Somalia	154
Gambia	108	Guinea Bissau	114	D.R. Congo	102	D.R. Congo	142
Ghana	108	Cameroon	99	Sudan	94	Guinea	91
Others	1,649	Others	1,340	Others	1,119	Others	1,477

Source: * Ministry of the Interior: Ministry of the Interior annual statistical report. ** Ministry of the Interior: Statistical Report of the Asylum and Refugee Office.

Asylum applicants according to country of nationality



Source: * Ministry of the Interior: Ministry of the Interior annual statistical report. ** Ministry of the Interior: Statistical Report of the Asylum and Refugee Office.

1.3. Asylum applicants by sex and year 2004-2007

Sex	2004*		2005*		2006**		2007**	
	Applicants	%	Applicants	%	Applicants	%	Applicants	%
Total	5,553	100.00	5,257	100.00	5,297	100.00	7,664	100.00
Male	3,930	70.77	3,563	67.78	3,413	64.40	4,856	63.36
Female	1,623	29.23	1,694	32.22	1,884	35.60	2,808	36.64

Source: * Ministry of the Interior: Ministry of the Interior annual statistical report. ** Ministry of the Interior: Statistical Report of the Asylum and Refugee Office.

Percentages have been calculated based on the total applicants for each year.

1.4. Asylum decisions per year proposed by the CIAR

	2004*	2005*	2006**	2007**
Favourable (1951 Geneva Convention status)	161	202	168	225
Subsidiary protection		124	188	345
Humanitarian grounds (subsidiary protection and humanitarian grounds)	163			
Unfavourable CIAR	1,653	1,228	1,475	1,872
Not admitted	4,648	3,312	2,417	4,197
Archive			229	201

Source: * Ministry of the Interior: Ministry of the Interior annual statistical report. ** Ministry of the Interior: Statistical Report of the Asylum and Refugee Office.

See further details of the data for 2006 and 2007 in Annex I: Statistical Annex.

5. National opinions on protection granted in Spain

During its gestation, different bodies have given opinions on the new Spanish legislation on asylum³². Although they have sometimes introduced suggestions for improvements, in general the comments have been very positive as regards the most fundamental aspects. The full and unambiguous transposition of subsidiary protection status has received particular praise.

The preliminary draft had disregarded the possibility of presenting applications for international protection at Spanish embassies abroad, but after considering the reports and opinions of the bodies consulted, the final text of the Law has restored this possibility, which in Spain represents a significant percentage of applications.

Thus, Article 38 of Organic Law 12/2009 states:

“In order to cater for cases presented outside Spain, provided the applicant is not a national of a country where there is diplomatic representation and there is a risk to his/her person, Spanish embassies may arrange for the transfer of the asylum applicant to Spain in order for him/her to present his/her application in accordance with the procedure provided for by this Law. Regulations implementing

³² The Socioeconomic Council, the Sectoral Immigration Conference, the Inter-Ministerial Commission for Alien Affairs, the Tripartite Labour Commission on Immigration, the General Council of the Judiciary, the Fiscal Council, the Forum on the Social Integration of Immigrants and the Council of State.

this Law shall expressly determine how the applicants may access the embassies and consulates, and the procedure for evaluating the necessity of their transfer to Spain”.

With regards to residence permits granted for exceptional reasons of a humanitarian nature, in Spain there is generally no official opinion from experts or NGOs as regards the need to harmonise humanitarian protection scenarios in the EU (which are currently governed merely by national regulations).

However, it is not uncommon for certain specialist NGOs to argue that scenarios of protection on humanitarian grounds should be included in Regulations on asylum and not be shared between Regulations on asylum and those on alien affairs.

Thus, the CEAR Report of 2009 criticises the fact that those who are refused asylum or whose application is not admitted for processing but who are recommended residence status for exceptional reasons, now fall under legislation on alien affairs (rather than that on asylum). In the opinion of CEAR:

“For example, a person may encounter obstacles in obtaining documentation in his/her country of origin (passport, criminal records certificate, etc.) when his/her region of origin is ravaged by an armed conflict, as has already occurred with persons originating from the Democratic Republic of Congo”³³.

Specialist NGOs share the common argument, held for many years, that as regards international protection Spain accepts a reduced number of international protection applications for ordinary processing (cf. the statistics in this Report), while granting refugee status, subsidiary protection or other humanitarian status to a very small number of persons.

Some NGOs (ACCEM, CEAR) are of the opinion that residence permits granted for exceptional circumstances as set forth in Article 45 of the RELOEX are interpreted in a restrictive manner by the authorities who issue them³⁴.

³³ CEAR report, 2009, page 170.

³⁴ Article on Wednesday, 14 January 2009 in the ABC newspaper.

6. Conclusions

As has been described in this Report, current Spanish legislation sets out up to six different scenarios of protection for exceptional reasons of a humanitarian nature (*non-EU harmonised* protection). One of these scenarios draws on the asylum Regulations itself (the Asylum Law and Implementing Regulations of the Asylum Law), which refers, as regards the temporary residence permit which must be granted, to the legislation on alien affairs (RELOEX).

Other scenarios are *ab initio* governed by general legislation on alien affairs (LOEX and RELOEX).

The scenarios under protection are:

- **First scenario:** when, as proposed by the Inter-Ministerial Commission of Asylum and Refuge, the Ministry of the Interior authorises the stay in Spain of an applicant for international protection who does not qualify for refugee or subsidiary protection status, but whose individual circumstances qualify for authorisation to reside in Spain for humanitarian reasons.
- **Second scenario:** when a foreign national is a victim of offences against workers' rights (working conditions which restrict or withdraw their rights, etc.), when the offence committed had racist or anti-Semitic motives or another type of discrimination relating to ideology, religion or the beliefs of the victim, one's ethnicity, race or nation, sex or sexual orientation, or any illness or disability.
- **Third scenario:** when a foreign national (most often female) is a victim of domestic or gender-based violence.
- **Fourth scenario:** when a foreign national can prove that he/she is suffering from a supervening illness that cannot be treated in the country of origin.
- **Fifth scenario:** when the foreign national can prove that there would be a risk to his/her security or safety on return to his/her country in order to obtain a visa (note the concomitance with the first scenario, but bearing in mind that this is not linked to a rejected application for asylum or subsidiary protection).
- **Sixth scenario:** when a foreign national cooperates with the administrative, police and judicial authorities by reporting a particular type of offence. This scenario includes,

inter alia, a temporary residence permit granted to foreign nationals who are victims of human trafficking who report the perpetrators of the offence of which they are victim.

The new Law 12/2009 contains a provision (Article 37. b) for scenarios where despite the denial of an application for processing or the refusal of international protection refugee or subsidiary protection status), the applicant's residence is authorised on humanitarian grounds in accordance with the LOEX.

Furthermore, general legislation on alien affairs, called upon to provide for humanitarian protection scenarios, is currently being reformed, as has been indicated in this Report. Therefore, it is not currently possible to predict how the humanitarian protection scenarios in force now will be reflected in the implementing regulations of future laws.

Annex I. Statistical annex

1. 2007. Source: Ministry of the Interior: Statistical Report of the Asylum and Refugee Office

Countries representing the highest number of asylum applicants. 2007

Total	7,664
Colombia	2,498
Iraq	1,598
Nigeria	680
Ivory Coast	336
Morocco	263
Algeria	247
India	178
Somalia	154
Congo	142
Guinea	91
Other countries	1,477

Asylum applicants by gender. 2007

Sex	Applicants	% of total
Male	4,856	63.40%
Female	2,808	36.60%

Decisions of admission and non-admission for processing of asylum applications. 2007

	Admitted	Not admitted	Eliminations	Total
Total	3,460	4,197	127	7,784
Colombia	1,300	1,252	75	2,627
Iraq	605	983	1	1,589
Nigeria	144	563	0	707
Ivory Coast	246	54	1	301
Morocco	77	208	3	288
Algeria	85	125	3	213
India	25	142	0	167
Somalia	53	95	0	148
D.R. Congo	83	47	3	133
Cuba	96	14	6	116
Other countries	746	714	35	1,495

Asylum decisions per year proposed by the CIAR. 2007

Country	Favourable (1951 G.C. status)	Subsidiary Protection	Unfavourable	Archive	Total
Total	225	345	1,872	201	2,643
Colombia	23	14	553	7	597
Iraq	13	38	488	12	551
Ivory Coast	0	193	79	0	272
Morocco	7	14	204	0	225
Cuba	19	9	35	67	130
Russia	30	2	66	4	102
Algeria	2	6	67	1	76
Nigeria	0	2	36	31	69
Armenia	1	0	46	2	49
Stateless person	35	19	18	2	74
Other countries	95	48	280	75	498

2. 2006. Source: Ministry of the Interior: Statistical Report of the Asylum and Refugee Office

Countries representing the highest number of asylum applicants. 2006

Total	5,297
Colombia	2,498
Nigeria	1,598
Morocco	680
Ivory Coast	336
Algeria	263
Bangladesh	247
Russia	154
D.R. Congo	142
Sudan	91
Stateless person	178
Other countries	1,119

Asylum applicants by gender. 2006

Sex	Applicants	% of total
Male	3,413	64.4%
Female	1,884	35.6%

Decisions of admission and non-admission for processing of asylum applications. 2006

	Admitted	Not admitted	Eliminations	Total
Total	3,392	2,417	136	5,945
Colombia	1,382	926	39	2,347
Nigeria	101	542	4	647
Morocco	197	68	7	272
Algeria	102	157	6	265
Cuba	184	23	22	229
Ivory Coast	199	24	3	226
Russia	99	46	9	154
Bangladesh	134	10	0	144
D.R. Congo	87	49	1	137
Stateless person	106	14	3	123
Other countries	801	558	42	1,401

Asylum decisions per year proposed by the CIAR. 2006

Country	Favourable (1951 G.C status)	Subsidiary Protection	Unfavourable	Archive	Total
Total	168	188	1,475	229	2,060
Colombia	40	9	639	10	698
Bangladesh	0	0	133	0	133
Cuba	1	17	82	12	112
D.R. Congo	7	0	77	25	109
Ivory Coast	8	69	14	6	97
Algeria	2	3	61	11	77
Russia	14	13	32	13	72
Iraq	12	22	7	16	57
Nigeria	0	3	38	15	56
Equatorial Guinea	10	8	28	0	46
Other countries	74	44	364	121	603

Annex II. Documentary annex

1. International Law

Convention relating to the Status of Refugees adopted in Geneva on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (United Nations), convened by the General Assembly in its resolution 429 (V), of 14 December 1950. Entry into force: 22 April 1954, by virtue of Article 43 United Nations Treaty Series N° 2545, Vol. 189, p. 137. Entry into force in Spain on 14 August 1978 (BOE of 21 October 1978; correction of errors in BOE of 14 November 1978). Cf. <http://www.acnur.org/biblioteca/pdf/0005.pdf>. Visited on 28 August 2009.

European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ratified by Spain on 26 September 1979, and published in the Official Spanish Gazette of 10 October 1979. Revised in accordance with Protocol N° 11 (entry into force on 1 November 1998). Cf. Text at <http://www.echr.coe.int/NR/rdonlyres/1101E77A-C8E1-493F-809D-800CBD20E595/0/SpanishEspagnol.pdf>. Visited on 28 August 2009.

2. EU law

Regulation (EC) N° 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105 of 13.4.2006). Cf. text <http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&lng1=en,es&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=425157:cs&page=6&hwords=562%2F2006%7E>. Visited on 28 August 2009.

Council Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326 of 13.12.2005).

Council Directive 2004/83/EC of 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304 of 30.9.2004).

Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers in Member States (OJ L 31/18 of 6.2.2003).

Council Directive 2003/86/EC of 22 September 2003, on the right to family reunification (OJ L 251 of 3.10.2003).

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212/12 of 7.8.2001).

3. Spanish law

Law 12/2009 of 30 October 2009 governing the right to asylum and subsidiary protection (BOE 263 of 31 October) <http://www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf>. Visited on 7 November 2009.

Law 52/2007 of 26 December 2007 recognising and broadening rights and establishing measures in favour of those who suffered persecution or violence during the civil war and dictatorship (BOE 310 of 27 December 2007). Cf. text <http://www.mpr.es/NR/rdonlyres/D03898BE-21B8-4CB8-BBD1-D1450E6FD7AD/85567/boememoria.pdf>. Visited 28 August 2009.

Organic Law 1/2004 of 28 December on Full Protection Measures against Gender-based Violence (BOE 313 of 29 December 2004). Cf. text at <http://www.migualdad.es/mujer/violencia/docs/A42166-42197.pdf>. Visited on 31 August 2009.

Organic Law 4/2000 of 11 January on the rights and freedoms of foreign nationals in Spain and their social integration (*BOE 10 of 12 January*) as amended by Organic Law 8/2000 of 22 December (*BOE 307 of 23 December*), Organic Law 11/2003 of 29 September (*BOE 234 of 30 September*), Organic Law 14/2003 of 20 November (*BOE 279 of 21 November 2003*). Modified by Judgment 236/2007 of 7 November of the Constitutional Court (*BOE 295 -Supplement-, of 10 December*). Cf. text at http://www.mir.es/SGACAVT/extranje/normativa_basica.html. Visited on 28 August 2009.

Law 5/1984 of 26 March 1984 governing the right to asylum and refugee status, as amended by Law 9/1994 of 19 May. Cf. full version at: http://extranjeros.mtas.es/es/NormativaJurisprudencia/Nacional/RegimenAsilo/documentos/Refundido_Asilo_94.pdf. Visited on 28 August 2009.

Law of 8 June 1957 governing the Civil Registry (B.O.E. 10, R. 777), amended by Law 40/1999 on Name, Surname and the Order Thereof. Cf. text at <http://www.mjjusticia.es/cs/>

Satellite?blobcol=urlpdf&blobheader=application%2Fpdf&blobkey=id&blobnocache=true
&blobtable=ley&blobwhere=1072197716005&ssbinary=true. Visited on 28 August 2009.

Spanish Civil Code. Cf. text at http://noticias.juridicas.com/base_datos/Privado/cc.html.
Visited on 28 August 2009.

Royal Decree 1325/2003 of 24 October on the temporary protection system in the event
of a mass influx of displaced persons. (BOE of 25 October 2003).

Draft Law to reform Organic Law 4/2000 of 11 January 2000 on the rights and freedoms
of foreign nationals in Spain and their social integration [http://www.icam.es/web3/grupos/
verInformacion.jsp?id=200903030022&canal=ex&cat=191&subCat=1089&subHij=0&pagi
na=1&princ=true&num=1](http://www.icam.es/web3/grupos/verInformacion.jsp?id=200903030022&canal=ex&cat=191&subCat=1089&subHij=0&pagina=1&princ=true&num=1). Visited on 7 December 2009.

Instruction DGI/10/2008 on temporary residence permits granted in exceptional circumstances,
as regards children whose mother or father were originally from Spain. Cf. text [http://
extranjeros.mtas.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/InstruccionesDGI/
documentos/2008/INSTRUCCION_10-2008.pdf](http://extranjeros.mtas.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/InstruccionesDGI/documentos/2008/INSTRUCCION_10-2008.pdf). Visited on 28 August de 2009.

Instructions DGI/SGRJ/05/2008 of the General Directorate of Immigration in relation to foreign
persons who have been victims of specific offences, including those of violent conduct in a
domestic environment or of gender-based violence. Cf text at: [http://extranjeros.mtin.es/es/
NormativaJurisprudencia/Nacional/RegimenExtranjeria/InstruccionesDGI/documentos/2008/
INSTRUCCION_10-2008.pdf](http://extranjeros.mtin.es/es/NormativaJurisprudencia/Nacional/RegimenExtranjeria/InstruccionesDGI/documentos/2008/INSTRUCCION_10-2008.pdf). Visited on 26 August 2009.

Instruction 2/2005 of the Chief State Prosecutor of 2 March 2005, on accreditation by
the Public Prosecutor of situations of gender-based violence. Cf. text at [http://www.bosch-
online.net/Novedades/Jurisprudencia/fiscalia/in2-2005.html](http://www.bosch-online.net/Novedades/Jurisprudencia/fiscalia/in2-2005.html). Visited on 26 August 2009.

Instruction DGI/SGRJ/06/2006, of 4 July 2006, on granting temporary residence permits
in exceptional circumstances for cooperation with the Employment and Social Security
Inspectorate. Cf. text at http://www.icam.es/docs/ficheros/200602010020_6_8.pdf. Visited
on 26 August 2009.

Instruction 14/2005 of the State Secretariat for Security on action to be taken at police
stations concerning female foreign nationals who are victims of domestic or gender-based
violence living in the country illegally. [http://www.icam.es/docs/ficheros/200602010020_6_4.
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