



18.3.2024

NOTICE TO MEMBERS

Subject: Petition No 1165/2019 by Alfredo Campos García (Spanish), on behalf of the MUN2 and the Hispano-Turkish Association, concerning the processing of asylum applications of Turkish citizens in Spain

1. Summary of petition

The petitioner denounces a breach of EU law by Spain, having identified a series of irregularities in the application of Community law on international protection. The petitioner points out that the procedures for examining applications for international protection take longer than 24 months. He also indicates that the prior appointment management system accessible through the online government administration system constantly shows a message saying that ‘at this moment there are no appointments available’ when applicants try to make an appointment to renew their documentation, resulting – in the opinion of the petitioner – in a flagrant breach of the obligations concerning documentation vis-à-vis applicants seeking international protection. That collapse of the appointment management system has a highly deleterious effect on the ability to exercise the right to employment, since applicants for international protection are not able to renew their documents in due time and being thus unable to assure their subsistence by their own means, they remain dependent on the public reception system for applicants for international protection. The petitioner also denounces the shortage of staff at the Asylum and Refugee Offices in Spain. Finally, he complains that Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, which should have been transposed before July 2015, have not yet been transposed properly by the Spanish authorities.

2. Admissibility

Declared admissible on 26 March 2020. Information requested from Commission under Rule 227(6).

3. **Commission reply**, received on 15 June 2021

Firstly, the provisions of EU law that are relevant to the issues identified by the petitioner are outlined. Next, the Commission's understanding of the challenges that the Spanish asylum system is confronted with, is described and the measures foreseen by the Spanish authorities to address them. The point about the transposition of the Asylum Procedures Directive¹ and the Reception Conditions Directive² (point 4) shall be addressed separately at the end.

a) Relevant provisions of EU law

As the petitioner rightfully indicates, the Asylum Procedures Directive requires Member States to ensure that the examination of applications for international protection be concluded as soon as possible, and as a general rule, within 6 months of the lodging of the application (Article 31(2) and (3)).

The general time limit of six months may be extended:

- for a period not exceeding a further nine months, in complex cases, in case of delays as a result of clear failure of applicants or where a large number of applications are simultaneously made (Article 31(3));
- for an additional period of three months in duly justified cases where necessary in order to ensure an adequate and complete examination of the application for international protection (Article 31(3)).
- in cases where the situation in the country of origin is temporarily uncertain (Article 31(4)). The conclusion of the examination procedure may also be postponed in cases where the situation in the country of origin is temporarily uncertain (Article 31(4)).

In any event, the examination of the application must be concluded within maximum 21 months from the lodging of the application (Article 31(5)).

Pursuant to Article 31(6) of the Directive, where a decision cannot be taken within six months, the Member State must inform the applicant of the delay, and, upon request of the applicant, of the reasons for the delay and of the expected timeline for taking a decision. Pursuant to Article 6 (1) of the Reception Conditions Directive, Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined.

Pursuant to Article 15 (1) of the Reception Conditions Directive, Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent

¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95.

² Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

authority has not been taken and the delay cannot be attributed to the applicant.

b) State of the Spanish asylum system: challenges and reform plans

Spain has been confronted over the past years with an exponential rise of the number of applications for international protection: from the average 5 000 – 6 000 applications per year prior to 2015, the number of applications rose to 55 749 applications lodged in 2018, 117 453 applications lodged in 2019, and 37 294 applications lodged in 2020 until 30 April.³ Spain is ranking since 2018 as the Member State with most asylum applications received.

This unprecedented and unexpected rise in the number of applications has placed the Spanish asylum system under tremendous strain, both in terms of capacity to receive and process applications and in terms of the country's capacity to provide reception conditions to the applicants needing it.

The Commission has maintained over the past two years a close and open exchange with the Spanish authorities on the challenges that the Spanish asylum system is facing. The Spanish authorities informed the Commission of their plans to reform in depth the asylum system, through measures that include the recruitment and training of additional staff for the Spanish Office for Asylum and Refugees (OAR), the preparation for adoption of new asylum legislation that would streamline the procedures and enable their faster processing, and investing in the creation of additional places in the reception system for the asylum applicants. Indeed, as indicated by the petitioner, the Spanish government adopted on 27 July 2018 a Royal Decree that allows the expansion of the staff of the OAR with 231 additional functionaries. However, the actual recruitment of the 231 additional staff has been delayed, first because of the blocking of the budget by the Spanish Parliament in 2019, then by a second round of political elections, then by the protracted negotiations for forming a coalition government, and finally, by the outburst of the coronavirus crisis. EU funding is available (from the EU Asylum, Migration and Integration Fund (AMIF) national program) to co-finance the envisaged reforms where needed.

In the context of the coronavirus crisis and the isolation measures adopted by the Spanish authorities, the Spanish Office for Asylum and Refugees (OAR) had temporarily suspended the registration and lodging of asylum applications, until 1 June 2020, when the normal procedures were resumed. During the temporary suspension, pending asylum applications continued to be processed, and documentation could be submitted in electronic form, but asylum interviews could not be held physically. Throughout the temporary suspension period, third country nationals who signed a self-declaration at a reception centre that they applied for asylum, were given access to material reception conditions, including accommodation, in the reception centres. The Spanish authorities communicated that all documents accrediting the status of applicant for international protection (red card) that expired prior to March 14, 2020 were automatically extended during the validity of the state of alarm, provided that a decision had not been notified. Where six months since the date when the application for international protection was lodged elapsed during the temporary suspension, the applicant was recognised the right to work on the basis of the receipt received when the application was lodged. In the Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (COM(2020) 2516) of 16.4.2020, the Commission recalled that

³ See data provided by the Spanish Ministry of Interior at: <http://www.interior.gob.es/web/servicios-al-ciudadano/oficina-de-asilo-y-refugio/datos-e-informacion-estadistica>.

“[...] even if there are delays, third-country nationals who apply for international protection must have their application registered by the authorities and be able to lodge them”

The Commission intends to monitor closely further developments concerning the reform of the Spanish asylum system, by taking into account the constraints resulting from the coronavirus crisis.

c) Failure by Spain to transpose the Asylum Procedures Directive (Directive 2013/32/EU) and the Reception Conditions Directive (2013/33/EU)

Asylum Procedures Directive:

Article 31(2) and (6) had to be transposed by 20 July 2015 (as provided for in Article 51(1) of the Directive) and Article 31(3), (4) and (5) of the Directive had to be transposed by the Member State into national legislation by 20 July 2018 (as provided for in Article 51(2) of the Directive).

Spain informed the Commission that it has transposed in full the Asylum Procedures Directive. However, it did not communicate measures adopted specifically for the transposition of Article 31(3), (4) and (5) following the expiry of the transposition time limit (20 July 2018).

In the Explanatory Document communicated to the Commission by letter of 6 November 2015 (MNE(2015)58288) in relation to the transposition of this Directive, the Spanish authorities refer, insofar as the transposition of Article 31 of the Directive is concerned, to Article 19 of Law 12/2009 (the Spanish framework law on asylum and subsidiary protection). The latter provision of Spanish law provides that, where the examination of an application for international protection requires more than six months, the applicant shall be informed of the reasons for the delay, in line with the provisions of Article 49 in Law 30/1993 establishing the regime governing the public administration and procedures.

Reception Conditions Directive:

Article 15(1) of the Reception Conditions Directive had to be transposed by the Member States into national legislation by 20 July 2015 at the latest (as provided for in Article 31(1) of this Directive). Spain informed the Commission that it has transposed in full the Directive. The Commission concluded that the transposition of the Directive 2013/33 is *prima facie* complete, without prejudice to the further assessment of the conformity of the transposition of the Directive.

d) Monitoring by the European Commission of the transpositions of the CEAS Directives

The Commission is currently engaged in a horizontal process of examining the completeness and conformity of the measures adopted by all the Member States for the transposition of the Asylum Procedures Directive and of the Reception Conditions Directive.

In this context, the Commission has launched a total of 53 infringement proceedings for failure to communicate measures adopted for transposing the Asylum Procedures Directive and the Reception Conditions Directive as well as the Qualifications Directive⁴. Seven of these

⁴ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the

procedures are still pending, including four regarding the transposition of the Asylum Procedures Directive. Further steps will be taken in all cases where the Commission evaluates that certain transposition measures are non-conform.

Conclusion

The Spanish authorities informed the Commission of their plan to carry out a comprehensive reform of the country's asylum system, which could facilitate addressing the problems identified by the petitioner. However, the plans to reform have incurred successive delays, and are currently on hold due to the coronavirus crisis. The Commission will continue the open dialogue with the Spanish authorities on these issues. Any issues related to a possible breach of the obligation to transpose in full the Asylum Procedures and Reception Conditions Directives will be addressed by the Commission in the context of the ongoing assessment of the completeness and conformity of the transposition.

4. Commission reply, received on 18 March 2024

Firstly, the provisions of EU law that are relevant to the issues identified by the petitioner are outlined. Next, the Commission's understanding of the challenges that the Spanish asylum system is confronted with, is described and the measures foreseen by the Spanish authorities to address them. The point about the transposition of the Asylum Procedures Directive⁵ and the Reception Conditions Directive⁶ (point 4) shall be addressed separately at the end.

a) Relevant provisions of EU law

As the petitioner rightfully indicates, the Asylum Procedures Directive requires Member States to ensure that the examination of applications for international protection be concluded as soon as possible, and as a general rule, within 6 months of the lodging of the application (Article 31(2) and (3)). The general time limit of six months may be extended:

- for a period not exceeding a further nine months, in complex cases, in case of delays as a result of clear failure of applicants or where a large number of applications are simultaneously made (Article 31(3));
- for an additional period of three months in duly justified cases where necessary in order to ensure an adequate and complete examination of the application for international protection (Article 31(3)).
- in cases where the situation in the country of origin is temporarily uncertain (Article 31(4)).

The conclusion of the examination procedure may also be postponed in cases where the situation in the country of origin is temporarily uncertain (Article 31(4)). In any event, the examination of the application must be concluded within maximum 21 months from the lodging of the application (Article 31(5)). Pursuant to Article 31(6) of the Directive, where a decision cannot be taken within six months, the Member State must inform the applicant of the delay, and, upon request of the applicant, of the reasons for the delay and of the expected timeline for

qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26.

⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95.

⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

taking a decision. Pursuant to Article 6 (1) of the Reception Conditions Directive, Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined. Pursuant to Article 15 (1) of the Reception Conditions Directive, Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

b) *State of the Spanish asylum system: challenges and reform plans*

Spain has been confronted over the past years with a significant rise in the number of applications for international protection: from the average 5 000 – 6 000 applications per year prior to 2015, the number of applications rose to 54 050 applications lodged in 2018, 117 800 applications lodged in 2019, 88 530 applications lodged in 2020, followed by 65 295 in 2021 and 117 945 in 2022. Spain is ranking since 2018 among the Member States with most asylum applications received. This unprecedented and unexpected rise in the number of applications has placed the Spanish asylum system under tremendous strain, both in terms of capacity to receive and process applications and in terms of the country's capacity to provide reception conditions to the applicants needing it.

Over the past years, the Commission has maintained a close and open exchange with the Spanish authorities on the challenges that the Spanish asylum system is facing. The Spanish authorities informed the Commission of their plans to reform in depth the asylum system, through measures that include the recruitment and training of additional staff for the Spanish Office for Asylum and Refugees (OAR), the preparation for adoption of new asylum legislation that would streamline the procedures and enable their faster processing and investing in the creation of additional places in the reception system for the asylum applicants. Indeed, as indicated by the petitioner, the Spanish government adopted on 27 July 2018 a Royal Decree that allows the expansion of the staff of the OAR with 231 additional functionaries. However, the actual recruitment of the 231 additional staff has been delayed, first because of the blocking of the budget by the Spanish Parliament in 2019, then by a second round of political elections, then by the protracted negotiations for forming a coalition government, and finally, by the outburst of the coronavirus crisis. EU funding is available (from the EU Asylum, Migration and Integration Fund (AMIF) national program) to co-finance the envisaged reforms where needed. The 2021-2027 AMIF national program includes a list of funding priorities to contribute to the development of the Spanish asylum system such as capacity building for public workers and the relocation of the OAR. In the context of the coronavirus crisis and the isolation measures adopted by the Spanish authorities, the Spanish Office for Asylum and Refugees (OAR) had temporarily suspended the registration and lodging of asylum applications, until 1 June 2020, when the normal procedures were resumed. During the temporary suspension, pending asylum applications continued to be processed, and documentation could be submitted in electronic form, but asylum interviews could not be held physically. Throughout the temporary suspension period, third country nationals who signed a self-declaration at a reception centre that they applied for asylum, were given access to material reception conditions, including accommodation, in the reception centres. The Spanish authorities communicated that all documents accrediting the status of applicant for international protection (red card) that expired prior to March 14, 2020 were automatically extended during the validity of the state of alarm, provided that a decision had not been notified. Where six months since the date when the

application for international protection was lodged elapsed during the temporary suspension, the applicant was recognised the right to work on the basis of the receipt received when the application was lodged. In the Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (COM(2020) 2516) of 16.4.2020, the Commission recalled that “[...] even if there are delays, third-country nationals who apply for international protection must have their application registered by the authorities and be able to lodge them”. The Commission intends to monitor closely further developments concerning the reform of the Spanish asylum system, taking into account the constraints resulting from the coronavirus crisis and the migratory pressure that Spain is under.

c) *Failure by Spain to transpose the Asylum Procedures Directive (Directive 2013/32/EU) and the Reception Conditions Directive (2013/33/EU)*

Asylum Procedures Directive:

Article 31(2) and (6) had to be transposed by 20 July 2015 (as provided for in Article 51(1) of the Directive) and Article 31(3), (4) and (5) of the Directive had to be transposed by the Member State into national legislation by 20 July 2018 (as provided for in Article 51(2) of the Directive). Spain informed the Commission that it has transposed in full the Asylum Procedures Directive. However, it did not communicate measures adopted specifically for the transposition of Article 31(3), (4) and (5) following the expiry of the transposition time limit (20 July 2018). In the Explanatory Document communicated to the Commission by letter of 6 November 2015 (MNE(2015)58288) in relation to the transposition of this Directive, the Spanish authorities refer, insofar as the transposition of Article 31 of the Directive is concerned, to Article 19 of Law 12/2009 (the Spanish framework law on asylum and subsidiary protection). The latter provision of Spanish law provides that, where the examination of an application for international protection requires more than six months, the applicant shall be informed of the reasons for the delay, in line with the provisions of Article 49 in Law 30/1993 establishing the regime governing the public administration and procedures.

Reception Conditions Directive:

Article 15(1) of the Reception Conditions Directive had to be transposed by the Member States into national legislation by 20 July 2015 at the latest (as provided for in Article 31(1) of this Directive). Spain informed the Commission that it has transposed in full the Directive. The Commission concluded that the transposition of the Directive 2013/33 is *prima facie* complete, without prejudice to the further assessment of the conformity of the transposition of the Directive.

d) *Monitoring by the European Commission of the transpositions of the CEAS Directives*

The Commission is currently engaged in a horizontal process of examining the completeness and conformity of the measures adopted by all the Member States for the transposition of the Asylum Procedures Directive and of the Reception Conditions Directive. In this context, the Commission has launched a total of 53 infringement proceedings for failure to communicate measures adopted for transposing the Asylum Procedures Directive and the Reception Conditions Directive as well as the Qualifications Directive⁷, on which one procedure is still pending. As part of EU PILOT Ref. No EUP(2021)9906, and following a preliminary

⁷ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26.

assessment of the measures notified, the Commission has identified possible instances of incompatibility between the national measures communicated and the provisions of the Asylum Procedures Directive and invited Spanish authorities to comment and provide relevant information and references to national legislation, in order for the Commission's services to finalise their assessment of the compatibility of the national implementing measures with the Directive's provisions. The Interior Ministry, as the Ministry responsible, and based on the input provided by Ministry of Foreign Affairs, the European Union and Cooperation, the Ministry of Inclusion, Social Security and Migration, the Ministry of Employment and Social Security and the Ministry of Education and Vocational Training, drew up a report responding to the Commission, and sent a reply on 29 April 2021.

Conclusion

The Commission continues the open dialogue with the Spanish authorities on the identified issues. Any issues related to a possible breach of the obligation to transpose in full the Asylum Procedures and Reception Conditions Directives will be addressed by the Commission in the context of the ongoing assessment of the completeness and conformity of the transposition. In this regard, The Commission is in the process of analysing the replies received in order to decide on the most appropriate future steps.