

23 October 2006

**NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE
EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:
(SPAIN)**

by

Ph.D. Irene Claro
Lecturer on International Public Law
University Pontificia Comillas
iclaro@der.upcomillas.es

Prof. Cristina Gortázar
Jean Monnet Chair
University Pontificia Comillas
cgortazar@rec.upcomillas.es

1. NORMS OF TRANSPOSITION

- Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

On 7 January 2005, a new Aliens Regulation was published in the official gazette. [Royal Decree 2393/2004 of 30 December, which is an enlargement of the Organic Law No. 4/2000 of 11 January, on Rights and Freedoms of Foreigners in Spain and their Social Integration (which was amended by Organic Law No. 14/2003 of 20 November, and by the Organic Law 11/2003 of 20 September 2003)]. This Royal Decree entered into force the 7th February 2005.

Along with it, several provisions of the 1995 Asylum Regulation [Royal Decree 203/1995 of 10 February] were amended. One of the reported intentions of the Government when drafting the amendments to the Asylum Regulation, was to transpose the Reception Conditions Directive, which was mainly done through the modification of article 15 of the Asylum Regulation, but also through an Additional Disposition, the number seventeen, to the Royal Decree by which the Aliens Regulation and amendments to the Asylum Regulation, were approved.

In addition to these articles, articles 163, 164 and 165 of the 2004 Aliens Regulation deals with the establishment of Reception Centres for Refugees as a part of the public Migration Centres network¹.

¹ The translation of the Articles into English in this report has been made by UNHCR.

- Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,...)
- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
 - Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
 - Provide the texts of any translation of the above norms into English if they are available.
- Approved before the Reception Conditions Directive and still in force:
1. Ministerial Order of 13 January 1989 (Social Affairs Ministry), regulating the Reception Centres for Refugees (CAR).
 2. Resolution 6 July 1998, General Department (*Dirección General*) of the IMSERSO (Institute of Migrations and Social Services depending on the Labour and Social Affairs Ministry), to develop the Ministerial Order of 13 January 1989.
 3. Ministerial Order of 18 September 2001 (Labour and Social Affairs Ministry), by which the economic quantities for the beneficiaries of the Reception Centres are established.
- Approved after the Reception Conditions Directive:
4. Resolution 11 February 2005, General Department for Integration of the Immigrants (*Dirección General de Integración de los Inmigrantes*) (depending on the Labour and Social Affairs Ministry), by which the maximum quantities regarding the economic helps for the beneficiaries of the Reception Centres for Refugees are updated.

- Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The central Government is competent to adopt legal norms on reception conditions for asylum seekers. The Reception Centres for Refugees were created by a Ministerial Order.

As a part of the public Migration Centres network, the Reception Centres for Refugees are depending on the Labour and Social Affairs Ministry, specifically on the General Department for Integration of the Immigrants

(Dirección General de Integración de los Inmigrantes) (see articles 163, 164 and 165 of the 2004 Aliens Regulation).

- Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

To transpose the Reception Conditions Directive the Government amended the 1995 Asylum Regulation through the 2004 Aliens Regulation. Besides the previous internal and administrative norms, like the Ministerial Orders or the Instructions, are still in force.

- Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

There isn't a general tendency to just copy the provisions of this directive into national legislation.

- Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

From the Governmental point of view, the transposition of the Reception Conditions Directive has been finished with the amendment of the Asylum Regulation and the internal regulations of the Ministry of Labour and Social Affairs.

The directive has been transposed in general with the amendment of the Asylum Regulation and this is a correct way to transpose. The problem is related to the amendment of the internal regulations of the Ministry of Labour and Social Affairs. The internal regulations of the Ministry of Labour and Social Affairs have been used also to transpose the directive and it seems that a Ministerial Order (for example) cannot be considered as a by-legal act through which a Directive could be considered transposed. Hence the transposition should be made completely through the Asylum Regulation or Law².

In this regard we are waiting for the new Asylum Law, although probably the future Asylum Law will introduce no change or development of the reception conditions regime.

At this moment the first draft of a new Asylum Law is being discussed at the Governmental level. Unfortunately the first draft is not yet available and we have had no access to the project of transposition rules.

² We share the opinion provided in this sense by UNHCR.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

None.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

“Final Report of the European Open Forum on Reception and Health Care of Asylum Seekers” Vienna, 26-28 January 2006 (www.receptionandhealth.net) (information provided by Spanish Red Cross).

About legal advice: “Informe sobre asistencia jurídica a los extranjeros en España”, Defensor del Pueblo (Spanish Ombudsman), Madrid, September 2005.

About minors: “Nuevos retos que plantean los menores extranjeros al Derecho” IV Jornadas sobre Derecho de los Menores, Isable E. Lázaro e Irene Culebras (Coord.), Universidad Pontificia Comillas y Fundación SEUR, 2006.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

At this moment there isn't any decision of jurisprudence.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The main actors in charge of reception conditions are the following Reception Centres:

- Public Reception Centres for Refugees (*Centros de Acogida de Refugiados* or CAR) (Alcobendas, Madrid, Mislata –Valencia- and Sevilla are directly dependent on the Public Administration);
- Reception Centres for Refugees (*Centros de Acogida de Refugiados* or CAR) under the supervision of NGOs (for example, Spanish Red Cross is running 7 reception centres, preferably for asylum seekers but to be also used for immigrants in case there are vacancies).
- Temporary Reception Centres (*Centros de Estancia Temporal* or CETI) in Ceuta and Melilla.
- Temporary Reception Centres (*Centros de Acogida Temporal* or CAT), under the supervision of the Spanish Commission for Refugee Assistance (CEAR) (6 around Spain).
- Because of lack of vacancies, hotels or apartments.
- When asylum seekers have family members living in Spain they can choose not to stay at the reception centre but to be hosted by their families. They can use the reception centres services or the ones placed at the Spanish Red Cross local branches. They can receive financial support for 6 months, max. 1 year –the same period as if they were at a reception centre³.

Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Under the Spanish legislation, an asylum seeker can apply for asylum at the border or within the territory. In both cases the asylum procedure has two stages. The first one, after the asylum claim is lodged, implies the admission or inadmission to the normal refugee status determination procedure. The second one, after the admission, implies the examination of the refugee status or, when it has been applied, also the humanitarian status (leave to remain for humanitarian reasons).

When asylum seekers lodged their claim at the border, they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim.

If the decision, after 4 days, is non-acceptance for admission the asylum seeker can ask for a re-examination on his/her request within the next 24 hours.

³ Information provided by the Spanish Red Cross at www.receptionandhealth.net

Within a period of 2 days the re-examination must be decided upon. If the decision is again negative, the applicant has to leave the border post and will be returned to their country of origin or to a third country (i.e. under readmission agreements, flight destination, visas on their passport...).

The maximum length of time for the admissibility procedure at the border is 7 days, from the moment in which the asylum application is lodged. In case of a judicial recourse, this may be extended for one or two additional days.

If UNHCR considers, against the criterion of the administration, that the application should be admitted to the regular Refugee Status determination procedure, the asylum seeker will be allowed to enter Spanish territory to lodge a judicial recourse against the Administration's decision. Should the inadmissibility be agreed by UNHCR, that applicant can still lodge the recourse and the judge will decide on its suspensive effect⁴.

Madrid airport is the point in the country where most asylum claims are submitted. The asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory.

When applicants apply for asylum within the territory, the Spanish Red Cross local branches are responsible for all the clinical analyses and the referral to a reception centre is made by the headquarters⁵.

The accommodation of an asylum seeker in a Reception Centre is not mandatory. According Article 4 of the Ministerial Order of 13 January 1989 regulating the Reception Centres for Refugees “in order to be accepted in these Centres it will be required, besides the availability of places, to fulfill the following requisites:

- a) Be a foreigner.
- b) Have presented an asylum request or for the recognition of the refugee status in Spain, and that the administrative file has not been decided upon.
- c) Lack of economic means for the needs of his/her needs and of his/her family. (...)”.

According to Article 13 of the Resolution 6 July 1998, approved to develop the Ministerial Order of 13 January 1989, special cases will have priority (for example, couples with children under 18, persons or families with a serious risk for political reasons in their country of origin, persons with psychosocial problems, etc.).

It should be noted that asylum seekers are allowed to remain in the Reception Centers for Refugees for a period of six months, which may be renewed (six months more) because of particular social circumstances or vulnerability.

The Temporary Reception Centres in Ceuta and Melilla do not normally have the capacity to lodge all asylum seekers, some of which have to wait until

⁴ Information provided by UNHCR.

⁵ Information provided by the Spanish Red Cross at www.receptionandhealth.net.

places are free, in order to access the Centers. The situation of asylum seekers who are outside the Temporary Reception Centres because of lack of vacancies and the refusal of the Government to move them to the peninsula (Ceuta and Melilla are not Schengen territory), has been precarious. Asylum seekers who lodge their applications in Ceuta and Melilla, remain in the respective Temporary Reception Centers (open Centers) until the admissibility of their claim is decided upon. If admitted to the procedure, they are then transferred to the Mainland where they may, according to the general requisites, be lodged in the Reception Centers for refugees⁶.

When asylum seekers overcome the admissibility phase in Ceuta and Melilla (maximum 2 months) they are relocated to a Reception Centre in the mainland⁷.

- B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers covered both stages according to the Asylum Regulation (Article 15 introduced to transpose the Directive to the Spanish legislation). The first one, after the asylum claim is lodged until the admission or inadmission to the normal refugee status determination procedure. The second one, after the admission to the normal refugee status determination procedure and till the final administrative resolution granting or denying refugee status or, when it has been applied, also the humanitarian status (leave to remain for humanitarian reasons).

However the practice is different. Asylum seekers are not beneficiaries of the reception conditions during the first stage. They are beneficiaries of the reception conditions only when their applications are admitted to the normal Refugee Status Determination procedure.

In case of application of Dublin II Regulation, they are not beneficiaries of the reception conditions.

4. GENERAL RULES ON RECEPTION CONDITIONS

- Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

⁶ Information provided by UNHCR.

⁷ Information provided by the Spanish Red Cross at www.receptionandhealth.net

Only after studying the cases on an individual basis and when there are special and extraordinary circumstances (usually because of psychiatric problems), it is possible to cover part of the material conditions (including some budget money) outside the reception centre.

When there is no place available in any reception centre or it is considered no advisable to access, it is possible to cover part of the material conditions (including some budget money) outside the reception centre, (for example, in hotels or apartments).

It is important to take into account that how the total quantities are distributed to the asylum seekers depends on the organisation (Public Administration or NGO) that manage the centre. For example, one NGO has reported that its policy is to give them a total amount of money at the beginning of the month/week as a salary for everything and they will have to learn how to manage their savings. Public reception centres reported that they have around 300 euros per asylum seeker, but this money is not given immediately to each one.

The total amount in and out the centre should cover certain allowances established by law [See Resolution 11 February 2005, General Department for Integration of the Immigrants, by which the maximum quantities regarding the economic helps for the beneficiaries of the Reception Centres for Refugees are updated]:

The quantities are:

Personal expenses and transport

Asylum seeker: 46 euros/month

Couple: 78 euros/month

Minors under 18: 17/ euros/ month/ person

Child over 18 and other relatives: 30 euros/month/person

Transport: depends on the cost of a monthly ticket

Wardrobe

Clothes and shoes: 62/season/person

Expenses for birth of a child: 162 euros/child

Training and social and cultural skills

Language courses: depending on the specific costs/person

Nursery: depending on the specific costs for every child

Cultural activities: depending on the specific costs

Didactic school Material: 130 euros course/child

Expenses for their support outside the centre

One person: the minimum official wage, around 560 euros/month

Family: Twice the minimum official wage, around 560 euros/month

Family numerous: Twice and a half the minimum official wage, around 560 euros/month

B. Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for

the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The reception conditions in kind, money or vouchers can be considered sufficient, taking into account that all services are basically covered within the reception centres. In addition certain centres provide psychological assistance and if the centre does not provide the service the person will be sent to whoever may provide him with the proper treatment for free.

Asylum seekers who need it, get their material needs covered through the administration and specialized NGOs that receive funding from the government. Referrals are made by asylum State organs.

Notwithstanding the situation of asylum seekers who are outside the Reception Centres for Refugees because of lack of vacancies is precarious⁸.

Spanish legal basis regarding Article 13(2) of the Reception Conditions Directive is Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

“1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status Determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. In general, access to education, to health care, to social security and to social services will be regulated, respectively, according to the dispositions in articles 9, 12 and 14 of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of foreigners in Spain and their social integration (in the wording given by the Royal Decree 2393/2004, of 30 December) (...)

3. In providing the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical or sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December).

⁸ Information provided by NGOs.

5. PROCEDURAL ASPECTS

- Q.13.** A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

The national legislation establishes that an application for asylum is an application for the status of refugee under the Geneva Convention (article 2 Asylum Law 1994), unless explicitly required another status.

At this moment the draft of a new Asylum Law is under discussion. This new Law is expected to transpose the Qualification Directive. It could introduce a change in this question. Unfortunately we don't have had still access to the draft.

- B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

There are no different reception conditions. Asylum seekers and beneficiaries of subsidiary protection are covered by the legislation on Reception conditions.

- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are not specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation. Article 4.1 of the Ministerial Order of 13 January 1989 establishes that the beneficiary of the Reception Centres for Refugees must be a foreigner that has presented an asylum request in Spain (that means, at the border or within the territory).

Each person can apply for asylum at the Spanish embassy if he/she is in a third country, different from his/her country of origin. In case of risk for the applicant article 16 of 1995 Asylum Regulation provides that the Interministerial Commission on Asylum and Refuge (*Comisión Interministerial de Asilo y Refugio* or CIAR), based on a proposal of the Asylum and Refugee Office (*Oficina de Asilo y Refugio* or OAR), can decide to move him/her to the territory of Spain.

- Q.14.** Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally

understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

The article 13(1) of the Reception conditions Directive makes clear that the reception conditions are available to applicants when they make their application for asylum. Nevertheless, the recently modified article 15(1) of the 1995 Asylum Regulation establishes the possibility to modulate the social, educational and health-related services, when the asylum application is pending admission to the normal Refugee Status Determination Procedure. It has to be noted that prior to the December 2004 amendment of this article, only asylum seekers whose claims had been admitted to the procedure had access to benefits. While the new formulation opens the benefits to all asylum seekers, keeps the possibility of ‘modulating’ them pending admission of the applicant. The contradiction goes further: article 13(2) establishes that the material reception conditions should be capable of ensuring the subsistence of applicants. It is difficult then to understand the standard set in article 15(1) of the Asylum Regulation when it says that the ‘modulation’ of benefits for asylum seekers pending the admission of their application to the normal Refugee Status Determination procedure, in any case should cover their basic needs. The only possible explanation is that the ‘modulation’ could operate only in cases where the benefits for applicants admitted to the normal Refugee Status Determination procedure, are above the standard of ensuring their subsistence⁹.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December) provides that:

“1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal RSD procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. (...)” (underlined added).

However, as mentioned above, asylum seekers don’t have access in the practice to reception conditions while they are not admitted to the normal refugee status determination procedure.

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

⁹ Information provided by UNHCR.

Q.17¹⁰.

Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

Article 5 of the 1995 Asylum Regulation establishes:

“2. Those asylum-seekers who are inside Spanish national territory will receive information on the need to provide evidence to support their request from the governmental agency that they have addressed. This agency must also provide information on the rights to which asylum-seekers are entitled under Law 5/1984 regulating refugee status and the right to asylum. In particular, they are to be informed of the right to have an interpreter and legal counsel. Likewise, the authority to which they have submitted their request will provide the asylum-seeker with medical attention, when appropriate, and will provide guidance regarding the currently-existing social services intended to cover the asylum-seeker’s immediate human needs” (emphasis added).

Asylum seekers are informed as soon as they allocated to a Reception Centre and the latest as soon as they arrive into the Centre.

At the border point (and as mentioned before, the most asylum claims are submitted in Madrid airport), asylum seekers are informed about the asylum procedure, social workers canalise the demands to the police (change of lawyer, medical demands,), they are informed about their rights and obligations during their stay at the transit zone.

Asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory. During this period they are informed about the Spanish health care and welfare system, the asylum procedure, their rights and duties, the necessity to be registered with the local population register (“padrón”) in order to be entitled to benefit from social benefits and the public health care system; if necessary, they can receive psychological support, etc.¹¹

B. Is the information provided in writing or, when appropriate, orally?

The information is generally provided in writing in different languages as soon as they get into the reception centre. The information is provided orally when the information sheet is not available in a language understood by an asylum seeker.

¹⁰ To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹¹ Information provided by the Spanish Red Cross, at www.receptionandhealth.net

B. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Yes, there is an information sheet in different languages (French, English, Russian, Armenian, Rumanian, Georgian, Arabic and Spanish). If the asylum seeker has another language, he/she will be informed orally by an interpreter¹².

At the public Centres for Refugees the languages are French, English, Spanish, Arabic and Russian.

C. Is the deadline of maximum 15 days respected?

The deadline of maximum 15 days is respected when the asylum seeker lodge its application at the Asylum and Refugee Office (OAR) or at Barajas airport.

In and outside Madrid the written information is provided at the time of lodging the asylum application¹³.

At the 4 public Centres for Refugees the maximum is 10 days.

Q.18¹⁴.

Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

In order to get legal advice the Asylum and Refugee Office (OAR) provides an information brochure where four NGOs (Spanish Red Cross, CEAR-Spanish Commission for Refugee Assistance, *Rescate* and ACCEM-Association of Spanish Catholic Commission for Migrations), the UNHCR Madrid Office and the details of the General Department of Immigrant Integration are mentioned.

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

As mentioned before there is an information sheet in different languages (French, English, Russian, Armenian, Rumanian, Georgian, Arabic and Spanish). If the asylum seeker has another language, he/she will be informed orally by an interpreter.

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

¹² Information provided by NGOs.

¹³ Information provided by UNHCR.

¹⁴ To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

As mentioned before, they are informed by writing in through an information sheet in different languages (French, English, Russian, Armenian, Rumanian, Georgian, Arabic and Spanish). If the asylum seeker has another language, he/she will be informed orally by an interpreter (information provided by NGOs).

D. How many organisations are active in that field in your Member State?

Spanish Red Cross, CEAR –Spanish Commission for Refugee Assistance, *Rescate Internacional* and ACCEM –Association of Spanish Catholic Commission for Migrations, and the UNHCR Madrid Office.

Q.19.

Documentation of asylum seekers (see article 6):

A. **What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)**

Article 13 of Asylum Regulation provides:

“1. The asylum-seeker will be provided with a duly stamped receipt of his request for asylum. He must attach this receipt to his passport, thereby enabling him to remain in Spain for a term no longer than sixty days. He must notify the competent authority whenever he changes his place of residence.

2. Once the request for asylum has been admitted to the regular refugee status determination procedure, authorization to remain in the country will be accredited through the issuance of a document to the asylum-seeker, thereby enabling him to remain inside Spanish territory while his file is being processed.”

The practice is that the receipt and the document are given at the time of formalizing the asylum application and of the notification of admission to the procedure, respectively.

B. **Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?**

C. **For how long is this document in principle valid and is it necessary to renew it after a certain period?**

Article 13 of Asylum Regulation establishes that:

“1. The asylum-seeker will be provided with a duly stamped receipt of his request for asylum. He must attach this receipt to his passport, thereby enabling him to remain in Spain for a term no longer than sixty days. He must notify the competent authority whenever he changes his place of residence.

2. Once the request for asylum has been admitted to the regular refugee status determination procedure, authorization to remain in the country will be accredited through the issuance of a document to the asylum-seeker, thereby

enabling him to remain inside Spanish territory while his file is being processed." (underlined added).

D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected¹⁵?

The mandatory deadline of 3 days is respected in the practice. Asylum seekers usually receive the document when they apply for asylum or when they receive the notification of admission to the normal refugee status procedure.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Q.20. Residence of asylum seekers¹⁶:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

The asylum seekers who lodged their applications within the country or at borders and have been admitted to the regular Refugee Status Determination procedure, have freedom of movement.

B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).

Article 5 of the Asylum Law: *Consequences of the request for asylum at the border:*

"7. (...). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose. (...)"

Regarding asylum applications within the territory Article 14 of the Asylum Regulation establishes: (*Precautionary measures*)

"If the asylum-seeker does not possess the official documents required to reside in Spain, the Ministry of Justice and of the Interior may set an obligatory place of residence for the individual concerned until a final decision on his file is handed down. The asylum-seeker must be informed of the decision to set an obligatory place of residence by the Governor of the

¹⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁶ Nota bene: the case of detention is covered by other questions and should be ignored under this question.

province in which he is located. Likewise, for reasons of public safety, the Minister of the Interior has the authority to adopt any of the measures stipulated in article 6 of Constitutional Law 7/1985 (July 1) regarding the Rights and Freedoms of Aliens in Spain.” (emphasis added).

It should be noted that this article has never been used¹⁷.

- C. **About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).**

Madrid airport is the point in the country where most asylum claims are submitted. The asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory. When applicants apply for asylum within the territory, the Spanish Red Cross local branches are responsible for all the clinical analyses and the referral to a reception centre is made by the headquarters. When asylum seekers have family members living in Spain they can choose not to stay at the reception centre but to be hosted by their families. They can use the reception centres services or the ones placed at the Spanish Red Cross local branches. They can receive financial support for 6 months, max. 1 year –the same period as if they were at a reception centre¹⁸.

The accommodation of an asylum seeker in a Reception Centre is not mandatory.

According Article 4 of the Ministerial Order of 13 January 1989 regulating the Reception Centres for Refugees “in order to be accepted in these Centres it will be required, besides the availability of places, to fulfil the following requisites:

- a) Be a foreigner.
- b) Have presented an asylum request or for the recognition of the refugee status in Spain, and that the administrative file has not been decided upon.
- c) Lack of economic means for the needs of his/her needs and of his/her family. (...)”.

¹⁷ Information provided by UNHCR.

¹⁸ Information provided by the Spanish Red Cross at www.receptionandhealth.net.

An asylum seeker will be informed and advised about the Reception Centres for Refugees by the Unit of Social Work placed at the OAR (Asylum and Refugee Office). Afterwards he/she lodge his/her application to be admitted in a Reception Centre. After an interview and taking into account the situation of the applicant, the Reception Centre makes a proposal to the General Department for Integration of the Immigrants, which is the responsible of the final decision of admission (Article 21 of the Resolution 6 July 1998).

According to Article 13 of the Resolution 6 July 1998 special cases will have priority (for example, couples with children under 18, persons or families with a serious risk for political reasons in their country of origin, persons with psychosocial problems, etc.).

- D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)¹⁹**
- E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

The accomodation of an asylum seeker in a reception centre is not mandatory.

An asylum seeker has the duty only to inform the competent authority of any changes of address as soon as possible (article 4(6) Asylum Law and article 9(2) and 13(4) of Asylum Regulation).

- Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

There are no dispositions in the Asylum Law or Regulation on the withdrawal of benefits for asylum seekers.

The only reference to this matter refers to the possibility to ‘modulate’ the benefits for asylum seekers pending their admissibility to the normal Refugee Status Determination. The recently modified article 15(1) of the Asylum Regulation establishes the possibility to modulate the social, educational and health-related services, when the asylum application is pending admission to the normal Refugee Status Determination Procedure²⁰.

¹⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁰ Information provided by UNHCR.

However it must be taken into account that asylum seekers don't have reception conditions before their applications are admitted to the normal refugee status determination procedure (admissibility phase).

Access to emergency health care is always ensured.

- B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice²¹?**

Article 16(2) has not been transposed. The 1995 Asylum Regulation mentions since its approval that the asylum seeker has one month to apply for asylum within the territory (Article 7).

- C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?**
- D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?
- E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome²²?

- Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

There are no legal or by-legal provisions concerning appeals on negative decisions on grant of benefits or on reception conditions, except on cases of article 7 paragraph 3 of the Directive (confinement of the asylum seeker in a particular place). The confinement or detention shall be decided by a judge, and hence appeals are possible according to the general procedural laws. The confinement or detention of asylum seekers normally takes place in the context of a trial for the expulsion or devolution of the asylum seeker that has entered or been caught in the process of entering illegally Spain. Normally the judge will decide on the confinement or detention prior to the lodging of the asylum application, which usually is made in the Internment Centre for Foreigners. In these cases, the admissibility procedure, which in Spain can take

²¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

up to a maximum of two months, is shortened in order to end before the 40 days maximum confinement. If the asylum seeker is admitted to the procedure he/she is let free.²³

- B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?**

Articles 8(4) and 19(2) of Asylum Regulation establish the right to legal assistance for asylum seekers.

Article 2(f) of Organic Law 1/1996 of 10 January, and article 22(1) of Aliens Law establish free legal assistance for asylum seekers.

- C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones²⁴?
- D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

If asylum seekers would like to put forward a complain they could send a letter addressed to the General Department for Integration of the Immigrants, the body in charge and dependant of the Ministry of Labour and Social Affairs.

The *Subdirección General de Intervención Social* (at the General Department for Integration of the Immigrants depending on the Labour and Social Affairs Ministry) is the office responsible for management of reception conditions. The Asylum and Refugee Office (OAR) is responsible for housing.

The Social Work Unit (*Unidad de Trabajo Social*) receives the complains. This Unit belongs to the Labour and Social Affairs Ministry (MTAS), although it is placed at the Asylum and Refugee Office (OAR) (which belongs to the Ministry of Interior).

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

- Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

²³ Information provided by UNHCR.

²⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Article 5(7) of the 1994 Asylum Law provides for asylum applications lodged at border that:

“7. (...). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose.”

Article 4 of Ministerial Order of 13 January 1989 regulating the Reception Centres for Refugees:

“1. In order to be accepted in these Centers it will be required, besides the availability of places, to fulfil the following requisites:

- a) Be a foreigner.
- b) Have presented an asylum request or for the recognition of the refugee status in Spain, and that the administrative file has not been decided upon.
- c) Lack of economic means for the needs of his/her needs and of his/her family. (...)”

Article 4(2) Ministerial Order of 13 January 1989 regulating the Reception Centers for Refugees defines the family members:

- ascendants and descendants;
- and the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, except legal or voluntary separation, divorce, age of majority or family independence.

In these cases the situation of each family member will be separately examined.

Article 13 of Resolution of 1998 gives priority to couples with children under 18.

At the international airports of Madrid, Barcelona and Las Palmas, there are reception facilities for families, and families reside there until their asylum claims are examined. In-country applicants, who lack financial means, have access to the Reception Centers, and there reside in family rooms. For applications in-country where the asylum seeker is kept in detention pending the decision on admissibility, men and women are kept separate in the Centers for aliens. Minors remain with their mothers.²⁵

When asylum seekers have family members living in Spain they can choose not to stay at the reception centre but to be hosted by their families. They can use the reception centres services or the ones placed at the Spanish Red Cross local branches. They can receive financial support for 6 months, max. 1 year –the same period as if they were at a reception centre²⁶.

Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for

²⁵ Information provided by UNHCR.

²⁶ Information provided by the Spanish Red Cross at www.receptionandhealth.net.

Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Article 5 of the 1994 Asylum Law establishes for asylum applications lodged at border that:

“7. (...). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose. (...)”

Article 5 of the 1995 Asylum Regulation provides for asylum applications lodged within the territory that:

“2. Those asylum-seekers who are inside Spanish national territory will receive information on the need to provide evidence to support their request from the governmental agency that they have addressed. This agency must also provide information on the rights to which asylum-seekers are entitled under Law 5/1984 regulating refugee status and the right to asylum. In particular, they are to be informed of the right to have an interpreter and legal counsel. Likewise, the authority to which they have submitted their request will provide the asylum-seeker with medical attention, when appropriate, and will provide guidance regarding the currently-existing social services intended to cover the asylum-seeker’s immediate human needs” (emphasis added).

All asylum seekers have appropriate accommodation. It should be noted that asylum seekers are allowed to remain in the Reception Centers for Refugees for a period of six months, which may be renewed because of particular social circumstances or vulnerability.

An asylum seeker will be informed and advised about the Reception Centres for Refugees by the Unit of Social Work placed at the OAR (Asylum and Refugee Office). Afterwards he/she lodge his/her application to be admitted in a Reception Centre. After an interview and taking into account the situation of the applicant, the Reception Centre makes a proposal to the General Department for Integration of the Immigrants, which is the responsible of the final decision of admission (Article 21 of the Resolution 6 July 1998).

- B. What is the total number of available places for asylum seekers?²⁷ Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

The total number of places for asylum seekers at the reception centres is at the moment 2079 (1370 at the public centres, and 700 at the centres managed by NGOs).

- C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?²⁸

²⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

It has been usually proved to be sufficient but sometimes may become insufficient depending on the changes on the numbers of asylum applications. For example, just after the Reception Directive came into force there were an overbooked situation of the centres during the first months²⁹.

- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

There are no special measures foreseen.

Q.25. Accommodation centres (important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)

- A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

There are only differences between public (managed by Public Administration) and private (managedby NGOs) centres.

- B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

The time limit for accommodation is linked to a stage of the asylum procedure if its duration is lower than 6 months.

The time limit is 6 months unless they do fall into any sanctions and may be extended to 12 months for cases under special needs (article 5 Ministerial Order 1898). This time limit will no longer be extended after the end of the asylum procedure, only if the asylum seekers get a positive resolution (subsidiary protection or refugee status) their stay can be extended up to one more month to give them time to make all the necessary arrangements to start up outside the centre .³⁰

- B. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Under the General Law the regulations regarding the reception centres are established under:

- Aliens Regulation approved in 2004 (Royal Decree 2393/2004 of 30 December):

²⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁹ Information provided by NGOs.

³⁰ Information provided by NGOs.

Chapter II- Migration Centres

Article 163-Public network of the migration centres.

Article 164-Legal system of the migration centres.

Article 165-Admission of the migration centres.

- Ministerial Order of 13 January 1989 (Social Affairs Ministry), regulating the Reception Centres for Refugees (CAR).

- Resolution 6 July 1998, General Department of the IMSERSO (Institute of Migrations and Social Services depending on the Labour and Social Affairs Ministry), to develop the Ministerial Order of 13 January 1989.

There are agreements signed by the Central Government with every region (*Comunidad Autónoma*) in Spain where there is a reception centre for refugees. For example Resolution 19 January 2005, of the General Technical Secretary, by which is Publishes the Additional Protocol to the Collaboration Agreement subscribed between the Ministry of Labour and Social Affairs and the Community of Madrid, for the developments of group actions on the assistance to immigrants, refugees, asylum seekers and displaced persons.

Besides there are internal regulations in each Reception Centre (article 24 of Resolution of 1998).

C. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?³¹

The regulations foresee the possibility of sanctions against asylum seekers in case of serious breach of the rules.

The decisions are taken together with the NGO and the correspondent civil servant in charge of the centres, although there isn't an independent arbitrator as such.³²

In case of breach of the rules at public reception centres, the competent authority is the direction of the centre.

In case of serious breaches of the rules (when the sanction can be the expulsion from the centre), the General Department for Integration of the Immigrants is the competent authority.

D. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

³¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

³² Information provided by NGOs.

The asylum seekers are involved in the management of the centres. There is a counsel of residents (*asamblea de residentes or Junta de Participación*) in each Reception Centre for Refugees, with a consultive nature (article 7 Resolution of 1998).

- E. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

The contribution to the cleaning, cooking and maintenance of the Reception Centres is the only work developed by the asylum seekers that could be considered as a (mandatory) contribution of them to the management of the Centres. This work is unpaid.

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

In the internal practice asylum seekers have free access to their relatives, legal advisers, UNHCR and NGOs. Further specification at legal or by-legal level would be advisable.

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There are no legal or by-legal dispositions establishing the possibility of the asylum seeker of communicating with relatives, UNHCR, legal advisers or NGOs.

Notwithstanding asylum seekers have access to UNHCR, specialized lawyers and pro-bono lawyers. In the information brochures established in article 5(1) of the 1995 Asylum Regulation, contact telephones and addresses of UNHCR, specialized NGOs and Bar Associations are included³³.

What usually happens when a NGO runs a Reception Centre for Refugees is that the NGOs' lawyers will be in charge of the cases, but there is no compulsory obligation for the asylum seekers to accept them. If the asylum seeker would like to take another legal adviser, private or NGO worker, he or she will be always free to choose who is going to represent and defend him/her.

³³ Information provided by UNHCR.

- C. **Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?**

No, there isn't any restrictions to access to the Reception Centres for Refugees.

- Q.27. A. **Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

The medical screening is compulsory. It does include the HIV test and it is organised by the Spanish authorities within the Health Public System or in contact with the specialized services already in place.

The asylum seekers allowed to enter the country are referred to an emergency reception point at Madrid local branch where they are counselled. They stay in a hostel for a short period and when clinical analysis results are ready they are referred to a reception centre –like those who apply for asylum within the territory. When applicants apply for asylum within the territory, the Spanish Red Cross local branches are responsible for all the clinical analyses and the referral to a reception centre is made by the headquarters.³⁴

- B. **Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?**

The legal provisions on reception conditions ensure that asylum seekers receive emergency care and essential treatment of illness.

Article 5 of the Asylum Regulation, about informing the asylum-seeker of his rights, provides:

“2. Those asylum-seekers who are inside Spanish national territory will receive information on the need to provide evidence to support their request from the governmental agency that they have addressed. This agency must also provide information on the rights to which asylum-seekers are entitled under Law 5/1984 regulating refugee status and the right to asylum. In particular, they are to be informed of the right to have an interpreter and legal counsel. Likewise, the authority to which they have submitted their request will provide the asylum-seeker with medical attention, when appropriate, and will provide guidance regarding the currently-existing social services intended to cover the asylum-seeker's immediate human needs” (emphasis added).

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December) establishes that:

“1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The

³⁴ Information provided by the Spanish Red Cross at www.receptionandhealth.net

benefits given could be modulated when the asylum application is pending of admission to the normal RSD procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. In general, access to education, to health care, to social security and to social services will be regulated, respectively, according to the dispositions in articles 9, 12 and 14 of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of foreigners in Spain and their social integration (in the wording given by the Royal Decree 2393/2004, of 30 December) (emphasis added). (...)

3. In giving the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physic o sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December)” (emphasis added).

Article 12 of the Aliens Law, about the right to Health Care, establishes:

“1. Those aliens who are in Spain and registered on the list of residents (“padrón”) of the municipality in which they habitually reside have the right to health care under the same conditions as Spaniards.

2. Those aliens who are in Spain have the right to casualty care under the public health service if they contract grave or accidental illnesses, regardless of their cause, and to the continuation of said care until they are considered medically recovered.

3. Those aliens under the age of eighteen years that are in Spain have the right to health care under the same conditions as Spaniards.

4, Pregnant aliens who are in Spain shall have the right to health care during pregnancy, labor and the postpartum period.”

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?³⁵

In Spain even if you are irregularly within the territory you are entitled to free access to the Public Health Care System in case of an emergency, women during pregnancy and childbirth, and all minors.

The asylum seekers go through the medical screening before going into the centre and on that interval time they are lodged (covering the expenses by the State or NGO) in hostels. Afterwards they usually go to doctors outside.³⁶

In general, Spanish Red Cross provides free medical help and in some cases psychological support to all asylum seekers who are still waiting to benefit from the medical insurance they are granted like any other national or

³⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

³⁶ Information provided by NGOs.

foreigner national who has been registered with the local population register (*padrón*)³⁷

Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

Seventeenth Additional Disposition of the Royal Decree 2393/2004, of 30 December, by which the Aliens Regulation is approved:

“The asylum seekers will be authorized to work in Spain, after six months of having lodged the asylum request, in case that it has been admitted to the procedure and has not been decided upon due to a cause not attributable to the applicant. The work authorization will be proven through the inscription “authorizes to work” in the asylum seeker identification card and, if should that be the case, in its successive renewals, and will be conditioned to its validity. In case that the inscription cannot be put in the document because the above mentioned requirements are not fulfilled, the Office for Asylum and Refuge will record this fact in a reasoned decision that will be notified to the applicant.” (underlined added).

B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December) establishes that:

“2. The asylum-seeker may be granted authorization to work in Spain by the competent authority, in accordance with the rules and regulations in force regarding aliens, depending on the circumstances surrounding his file and current situation.”

C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?

D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Article 9 of the Alien’s Law, on the right to Education, establishes that:

“3. Aliens legally resident shall have the right to education of a non-obligatory nature under the same conditions as Spaniards. More specifically,

³⁷ Information provided by the Spanish Red Cross at www.receptionandhealth.net

they shall have the right to access the levels of education and training not covered in the previous paragraph, as well as to the obtainment of the corresponding degrees in each instance and to access the public system of scholarships and aid”.

Internal regulations of Reception Centres can provide for vocational training.

Vocational training is provided in the Reception Centres runned by the Ministry of Labor and Social Affairs. It is also provided by some NGOs that provide assistance to asylum seekers.

Asylum seekers are in this respect in a similar situation to that of Spaniards. There is no specific disposition on special vocational training for asylum seekers designed to improve their possibilities to join the labor market.³⁸ .

F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules goes well beyond the standard set in the Directive in some aspects: the timeframe is six months and there is no discrimination against the asylum seeker, as established in Article 11, paragraph 4 of the Directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

According to Article 15 of the Spanish Asylum Regulation, as amended by the Royal Decree 2393/2004, of 30 of December, asylum seekers could be beneficiaries of the reception programs whenever “*they don’t have sufficient economics means*”. Therefore if there is any possibility to prove it, it could imply for them not to be accepted within the reception centre.

In practice asylum seekers are not requested to contribute to reception conditions.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

³⁸ Information provided by NGOs.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

“3. In providing the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical or sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December).”

B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Their specific situation is taken into account by giving priority in access to Reception Centres for Refugees (Article 13 Resolution 6 July 1998, General Department of the IMSERSO (Institute of Migrations and Social Services depending on the Labour and Social Affairs Ministry), to develop the Ministerial Order of 13 January 1989)

As said before, asylum seekers have access to Spanish health care in the same conditions as Spanish citizens. The Reception Centres provides monitoring and support for minors with special educational needs and psychosocial support and coordination with other public or private mental health system (at least the Reception Centres runned by Spanish Red Cross, see www.receptionandhealth.net).

C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

The special needs of the concerned persons are identified when they apply for asylum by the Social Work Unit (*Unidad de Trabajo Social*) of the Labour and Social Affairs Ministry placed at the Asylum and Refuge Office.

Afterwards they could be identified any time since they are assigned to a reception centre through the social workers, psychologist and authorized personal that will be monitoring and providing counselling and assistance in the evolution process of the asylum seeker.³⁹

D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

³⁹ Information provided by NGOs.

If special needs are identified asylum seekers will be properly referred to the appropriate professionals existing within the Spanish Health System and other possible complementary services provided by other NGOs or specialized organizations.

Q.31.

About minors:

A. Till which age are asylum seekers considered to be minor?

Till 18.

B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

Minors are attending public school but they can receive educational support at the Reception Centre.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

“1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status Determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. In general, access to education, to health care, to social security and to social services will be regulated, respectively, according to the dispositions in articles 9, 12 and 14 of the Organic Law 4/2000, of 11 January, on the Rights and Freedoms of foreigners in Spain and their social integration (in the wording given by the Royal Decree 2393/2004, of 30 December)” (emphasis added)

Article 9 of the Alien’s Law:

“1. All aliens under the age of eighteen years have the right and obligation to education under the same conditions as Spaniards, including access to a basic, obligatory education free of charge, the obtainment of the corresponding academic degrees and access to the public scholarship and aid system.

2. In the case of the pre-school education, which is of voluntary nature, the Public Administrations will guarantee the existence of a number of vacancies enough for the schooling of the population that requires it.

3. Aliens legally resident shall have the right to education of a non-obligatory nature under the same conditions as Spaniards. More specifically, they shall have the right to access the levels of education and training not covered in the previous paragraph, as well as to the obtainment of the corresponding degrees in each instance, and to access the public system of scholarships and aid.

4. The public powers shall promote that the foreigners legally resident that have need of it, are able to receive teaching for their better social integration, with acknowledgement and respect for their cultural identity”.

Fourteenth Additional Disposition of the Royal Decree 2393/2004, of 30 December, by which the Aliens Regulation is approved, on access of minors to education of non-mandatory nature, establishes that:

“Without prejudice to article 9.3 of the Organic Law 4/2000, of 11 January, the educational administrations, exercising their competences on educational matters, may facilitate the access of minor foreigners registered on the list of residents (“padrón”) of a municipality to levels of post-obligatory non-university education and to the obtainment of the corresponding degrees in equality of conditions than Spaniards of their age.”

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Minors seeking asylum have access to the obligatory education system when they arrive to the reception centres.

Minors in Spain, included asylum seekers or undocumented migrants, have access to the general education system, immediately after being registered on the list of residents (*padrón*). The time limits depends on each city and village.

D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

Specific education is available for asylum seekers at the Reception Centre, where the asylum seekers usually have access to Spanish language and social skill courses.

Reception Centres can provide another courses (like gardening, building, etc.) based on particular agreements with local Councils.

E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes, as a general rule based on a full respect of the family union principle.

F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Minors with special needs have access to appropriate mental health care and qualified counselling. They are entitled to benefit from the health care public system and to the psychological support provided by the Spanish Red Cross.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

“3. In providing the services which are referred to in paragraph 1 of this article, will be taken into consideration the specific situation of persons with a specific vulnerability, such as minors, unaccompanied minors, senior citizens, pregnant women, one-parent families with minor children, and persons who have been subject to torture, rape, or other serious form of psychological, physical or sexual violence, according with the directives that appear in the international recommendations used in harmonizing the treatment of these social groups of refugees or displaced individuals (in the wording given by the Royal Decree 2393/2004, of 30 December).”

Attention to vulnerability of asylum seekers is ensured in the Reception Centres, but the situation is not so clear in other reception/detention facilities⁴⁰.

G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Regional Governments are responsible for all unaccompanied minors. There are a number of practical shortcomings linked to the exercise of the legal guardianship for unaccompanied minor asylum seekers. Among the most relevant is the tendency of guardians not to pursue the asylum procedure on behalf of the minor, but to try to regularize their stay in Spain through the aliens regime, in which they evaluate they have better chances that going through a restrictive asylum procedure. While there is no legal impediment to pursue the asylum and aliens ways in parallel, an incorrect interpretation of the Asylum and Refugee Office has resulted until recently in having to choose one of them.

Article 15 of the Asylum Regulation (as amended by the Royal Decree 2393/2004, of 30 December):

“4. Asylum seekers under 18 years of age in situation of abandonment shall be referred to the competent services in matters of minors’ protection, communicating this to the Prosecutor’s Office. The legal guardian that is legally assigned to the minor shall represent him during the asylum proceedings. The asylum requests shall be processed in conformity with the criteria set in Conventions and International recommendations applicable to the minor asylum seeker.”

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other

⁴⁰ Information provided by UNHCR.

suitable accommodation)? (see article 19, §2 which is mandatory provision)

Regional Governments are responsible for all unaccompanied minors, so unaccompanied minors who apply for asylum are housed at these facilities. But because of the strict Regional Authorities' interpretation of the osteometric analysis to establish the age of a minor and because Spanish Red Cross considered a specific resource to be a better option for young people (18-23 years old), Spanish Red Cross has been running it for the last 3 years.

Reception Centres for young asylum seekers:

Staying: during all the asylum procedure's length.

Age: between 18 to 23 years old.

Spanish Red Cross is running one centre with 8 places.

Services: Many services are quite similar to the ones at Reception Centres but emphasizing the socio-educational programme (vocational training, sexual and emotional education, fostering healthy habits, proper nutrition, dental care, etc.), the preparation for the transition to adulthood supporting autonomy and fostering labour market integration.⁴¹

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

See article 92 of Aliens Regulation.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

Reception Centres for young asylum seekers. The stay during all the asylum procedure's length. Age: between 18 and 23 year old. Spanish Red Cross is running one reception centre with 8 places.

B. Non availability of reception conditions in certain areas

C. Temporarily exhaustion of normal housing capacities

D. The asylum seeker is confined to a border post

⁴¹ Information provided by the Spanish Red Cross at www.receptionandhealth.net

Article 5 of the Asylum Law:

“7. (...). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose. (...)”

Detention conditions for asylum seekers at airports (or, according to the Spanish Constitutional Court, “restriction to personal freedom”, which is an intermediate status between detention and personal freedom) are good. Acceptable shelter facilities exist in the Airports of Madrid (where 95% of asylum requests at borders are lodged), Barcelona and Las Palmas. The maximum time of confinement at the border is of seven days. If asylum applications are lodged in other airports, the Police resort to Internment Centres for Foreigners where the asylum seekers remain in detention conditions.⁴²

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

A. In which cases or circumstances and for which reasons⁴³ (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Asylum seekers are never detained when they lodge their claim within the territory. They are detained or arrested if a crime has been committed.

When asylum seekers lodged their claim at the border, they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim. The maximum length of time for the admissibility procedure at the border is 7 days. If the final administrative decision is negative, the applicant has to leave the border post and will be returned to their country of origin or to a third country (i.e. under readmission

⁴² Information provided by the UNHCR.

⁴³ Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that “Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum” is or not respected (even if has not yet to be transposed).

agreements, flight destination, visas on their passport...) (Article 5(7) Asylum Law of 1994).

Detention conditions for asylum seekers at airports (or, according to the Spanish Constitutional Court, “restriction to personal freedom”, which is an intermediate status between detention and personal freedom) are good. Acceptable shelter facilities exist in the Airports of Madrid (where 95% of asylum requests at borders are lodged), Barcelona and Las Palmas. The maximum time of confinement at the border is of seven days. If asylum applications are lodged in other airports, the Police resort to Internment Centres for Foreigners where the asylum seekers remain in detention conditions.⁴⁴

Asylum seekers who lodge their applications after being confined to an Internment Centre for Foreigners (normally those intercepted attempting to enter Spain or immediately after) are ‘detained’ [Article 60 of the Aliens Law: *Placement in an Internment Center* (nb. Relevant for persons who request asylum after the internment order has been issued)].

If the asylum application is admitted to the regular Refugee Status Determination procedure, the asylum seeker is freed and placed in a centre for asylum seekers.

The general conditions of those centres, if not overcrowded, are acceptable according to UNHCR standards.

The situation of asylum seekers in Ceuta and Melilla is particular. They are free within these North African enclaves, but are not free to pass to the Peninsula. It has to be noted that both enclaves are not Schengen territory. Only those asylum seekers admitted to the regular Refugee Status Determination procedure are allowed to pass to the peninsula and then are placed in reception centres⁴⁵.

From the UNHCR’s point of view, Spanish legislation meets the standards of article 7 Reception Conditions Directive and generally also meets the UNHCR standards on detention of asylum seekers.

Article 60 of the Aliens Law: *Placement in an Internment Center* (nb. Relevant for persons who request asylum after the internment order has been issued)

“1. If the proceedings on the alien are due to the causes included in sections a), b) and c) of Article 50 herein or section g) of Article 49 herein, and the expulsion of the alien concerned is to be proposed, the governmental authority may propose to the corresponding Examining Judge with jurisdiction that the alien be placed in an internment center until the sanction proceedings have been conducted. The judicial decision with regard to the request for the internment of the alien pending expulsion shall be issued in a reasoned court order (“auto”), following a hearing with the alien concerned.

2. The internment shall continue throughout the time required for the purposes of the proceedings, but may in no case surpass forty days. Nor may the alien’s internment be re-ordered for any of the causes provided for in the

⁴⁴ Information provided by the UNHCR.

⁴⁵ Information provided by UNHCR.

same proceedings. The court decision authorizing the internment may, depending on the circumstances surrounding each case, establish a maximum term of internment that is shorter than the aforementioned.

3. Minors who are in the circumstances foreseen for internment shall be placed at the disposal of the proper child protection services. Following a favorable report by the Public Prosecutor, the Judge may authorize the minor's placement in an alien internment center if the minor's parents or guardians are there as well, if his or her parents or guardians request the minor's placement there and if special cells exist which guarantee family privacy."

Article 9 of the Asylum Regulation:

"2. He must also indicate a place of residence and inform the competent authority of any changes of address as soon as possible."

B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

Spain has not adopted specific measures to transpose article 7(3) of the Reception Conditions Directive. The only case of 'detention', as mentioned above (Q.33.A), takes place when asylum seekers lodged their claim at the border. In this case they are held, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim. The maximum length of time for the admissibility procedure at the border is 7 days (Article 5(7) Asylum Law of 1994 Article 5(7) of the 1994 Asylum Law provides that:

"7. (...). While the request for asylum or for re-examination is being processed, the asylum-seeker must remain at the border point. Adequate facilities will be provided for this purpose.")

C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Article 14 of the Asylum Regulation: *Precautionary measures*

"If the asylum-seeker does not possess the official documents required to reside in Spain, the Ministry of Justice and of the Interior may set an obligatory place of residence for the individual concerned until a final decision on his file is handed down. The asylum-seeker must be informed of the decision to set an obligatory place of residence by the Governor of the province in which he is located. Likewise, for reasons of public safety, the Minister of the Interior has the authority to adopt any of the measures stipulated in article 6 of Constitutional Law 7/1985 (July 1) regarding the Rights and Freedoms of Aliens in Spain." (emphasis added).

D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

As mentioned above (Q.33.A), asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

The only case of ‘detention’ takes place when asylum seekers lodged their claim at the border. In this case they are hold, not "detained", while the asylum office decides on the admissibility or inadmissibility of the asylum claim. The maximum length of time for the admissibility procedure at the border is 7 days (Article 5(7) Asylum Law of 1994). (see Q.33.A.)

F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Asylum seekers are only ‘detained’ at border points at airports during a maximum length of 7 days. Otherwise there are no closed centres for asylum seekers.

G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR has unhindered access to all locations where asylum seekers are placed or sheltered.

H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which “*Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review*” respected (even if it has not yet to be transposed)?

As mentioned above (Q.33.A), asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

- I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?
- J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “*Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention*” respected?).

As mentioned above (Q.33.A), asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

- K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

As mentioned above (Q.33.A), asylum seekers are never detained when they lodge their claims within the territory. They are only detained or arrested if a crime has been committed.

- L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Article 60 of the Aliens Law: *Placement in an Internment Center* (nb. Relevant for persons who request asylum after the internment order has been issued):

“3. Minors who are in the circumstances foreseen for internment shall be placed at the disposal of the proper child protection services. Following a favorable report by the Public Prosecutor, the Judge may authorize the minor’s placement in an alien internment center if the minor’s parents or guardians are there as well, if his or her parents or guardians request the minor’s placement there and if special cells exist which guarantee family privacy.”

- M. In particular is article 10 regarding access to education of minors respected in those places?

There is no closed places for minors.

N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

There is no information available, due to the absence of asylum seekers detained.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The system of providing reception conditions is centralised (article 163(3) of 2004 Aliens Regulation; article 2 of Ministerial Order of 1989 and article 21 of Resolution of 1998).

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)⁴⁶

All Reception Centres are runned either by the Central Government through General Department for Integration of the Immigrants –depending on the Ministry of Labour and Social Affairs- or managed by NGOs, that receive funding from the Government.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?⁴⁷

Reception Centres in Spain are distributed around the Spanish territory. Some of them are located in rural areas but the biggest ones are mainly located in urban areas.

Managed by the NGOs: 29
Runned directly by the State (public Centres): 6 .

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no specific legislation, plan or rules in order to spread the asylum seekers all over the territory. But there is a general practice trying not

⁴⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

to locate people from the same nationality in the same regions and villages. NGOs in charge try to spread them in different locations⁴⁸.

- Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist?
Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?⁴⁹

It doesn't exist a central body representing all the actors involved in reception conditions.

The role of coordination is played by Central Government through General Department for Integration of the Immigrants (which depends on the Ministry of Labour and Social Affairs).

- Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

According to the Royal Decree 1600/2004 of 2 July, developing the structure of the Ministry of Labour and Social Affairs, the body in charge of guidance, monitoring and controlling the system of reception conditions is the General Department for Integration of the Immigrants (*Dirección General de Integración de los Inmigrantes*). The competent ministry is the Labour and Social Affairs Ministry. But the Interior Ministry is the competent one for reception conditions at the Internment Centres for Foreigners (*Centros de Internamiento de Extranjeros* or CIE).

UNHCR undertakes regular monitoring of the reception conditions as part of its missions to different regions of Spain. The conclusions and recommendations are shared and discussed with the Spanish Government, notably the General Directorate for the integration of Immigrants, at the Ministry of Labor and Social Affairs.⁵⁰

- B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,...) to be respected in particular in accommodation centres?⁵¹

⁴⁸ Information provided by NGOs.

⁴⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁵⁰ Information provided by the UNHCR

⁵¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

It has not been approved specific quality standards for housing services to be respected in accommodation centres.

- C. **How is this system of guidance, control and monitoring of reception conditions organised?**⁵²
- D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?⁵³

The body in charge produce public reports for the institutions interested. No information has been provided about the frequency.

- Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

The total number of places for asylum seekers at the reception centres is at the moment 2079 (1370 at the public centres, and 700 at the centres managed by NGOs).

- B. What is the total budget of reception conditions in euro for the last year for which figures are available?⁵⁴

The only information received by the Spanish authorities refers to the information provided by Spain to Eurostat. Relating the target group of article 3.3 European Refugee Fund II, the amounts are in the last three years:

- 2003: 5927.
- 2004: 5553.
- 2005: 5257.

- C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?⁵⁵
- D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs of reception conditions are supported by the central government, taking into account also the funds of the European Refugee Fund and the ENEAS EQUAL programme.

About financing Reception Centres, see Article 7 of Ministerial Order of 13 January 1989, regulating the Reception Centres for Refugees.

⁵² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁵³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁵⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁵⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

E. Is article 24 § 2 of the directive following which “*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*” respected?⁵⁶

No legal or by-legal provisions refer to these matters. Moreover, concerning the allocation of necessary resources, article 15 of the Asylum Regulation, amended in December 2004, expressly contradicts the standard set in article 24(2) of the Directive.

Article 15 of the Asylum Regulation:

“1. Asylum seekers, provided that that they do not have economic means, shall be able to benefit from the social, educational and health-related services rendered by the competent agencies of the Public Administration, within the means and budget availabilities of these agencies, to ensure a standard of living adequate and capable of ensuring their subsistence. The benefits given could be modulated when the asylum application is pending of admission to the normal Refugee Status Determination procedure, guaranteeing in any case the coverage of the basic needs of the asylum seekers. (...)” (underlined added)

The underlined phrase quoted above contradicts the provision of article 24(2) of the Directive, conditioning the reception conditions to funding availability, instead of ensuring that necessary resources are allocated. It is interesting to note that article 15 of the Asylum Regulation has been amended (30 December 2004), and the underlined phrase that was included in the previous formulation, has remained in the newly amended article.⁵⁷

Q.41. A. What is the total number of persons working for reception conditions?⁵⁸

At the public reception centres there are 131 persons working for reception conditions. There is no information available from the centres managed by NGOs.

B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?⁵⁹

Staff at the Reception Centres of Refugees is adequately trained. UNHCR believes that at present there is no shortage of funds for the reception conditions of asylum seekers.⁶⁰

⁵⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁵⁷ Information provided by the UNHCR.

⁵⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁵⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁶⁰ Information provided by the UNHCR.

The training of workers takes into account specific needs of unaccompanied minors. At this moment the gender dimension is one of the priorities for the public reception centres for refugees.

- C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?⁶¹

There are no specific rules about the deontology of persons working in reception centres. Each profession has its own general deontological code. Regarding confidentiality, the general rules are applied [Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal (*BOE núm. 298, de 14 de diciembre*), en su redacción dada por la Ley 62/2003, de 30 de diciembre (*BOE núm. 313, de 31 de diciembre*)].

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

- Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

- Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...))?

The rules on reception conditions before the Directive were the norms regulating the Centres for Refugees. These norms were the Ministerial Order of 1989, the Resolution of 1998 and the Ministerial Order of 2001. They are still in force and don't have legal or by-legal nature.

- Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?)

The rules are more clear and precise (specially relating to education, health care, work permits) but there is no one basic text dealing with reception conditions. The transposition has been made through the reform of 2004 of the Aliens Regulation. This reform amended only some articles of the Asylum Regulation and the existing norms relating reception centres are still in force.

⁶¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Several aspects and standards of the Directive need still to be transposed. It appears possible that the transposition of those aspects is undertaken in an overall transposition effort through a new Asylum Law and Regulation with the transposition of the Procedures, Qualification and Reception (in those aspects already not transposed) Directives⁶².

The reception conditions have remained unchanged but what have change is the right to access to them for the asylum seekers. Now they do have the right to access them just immediately after formulating their asylum claim. .

Nevertheless, the situation in the internal practice has not changed and asylum seekers must wait until they are admitted to the refugee status determination procedure in order to receive reception conditions.

The information in the brochure for asylum seekers is better than before the Directive was approved.

Asylum seekers are allowed to work automatically after six months the application of asylum was submitted. They will just stamp the inscription "authorised to work" on their asylum seeker card when requested.

Before the implementation of the Reception Directive, asylum seekers were allowed to work after six months, but they needed to lodge an application together with a job offer to obtain the administrative authorisation to work⁶³.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There has been no important debate about the transposition of the directive. At this moment the draft of a new Asylum Law is under discussion. It has not been made yet public. One reason of the delay of its approval could be related to the need to extend reception conditions to asylum seekers during the admissibility stage.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

⁶² Information by UNHCR.

⁶³ Information by UNHCR.

The transposition has contributed to make the internal rules more generous, specially relating work permits.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?⁶⁴

Weaknesses:

1. Asylum seekers must wait until they are admitted to the refugee status determination procedure in order to receive reception conditions. During the first stage of the asylum procedure they are not beneficiaries of reception conditions.
2. A Ministerial Order or a Resolution cannot be considered as a by-legal act through which a Directive (questions like respect to family union principle, regulation of housing or access to UNHCR, legal advisers and NGOs) could be considered transposed, hence the transposition should be made through the Asylum Regulation or Law.
3. Reception conditions in an emergency case: If the number of places is insufficient it is necessary to rent a guest house or apartment and then the reception conditions are worst.
4. One element that could be changed in order to obtain a substantial improvement of the services provided will be the inclusion of a team of professionals specialized on psiquiatric pathologies within the Centres. At present just only certain centres have psychology services. Besides it would be really valuable to have a professional of specific compensatory education for minors under 12 years. (suggestions by NGOs at practical questionnaires).

Strengths:

1. Work permit received automatically six months after the aslyum claim (better integration).
2. Generalised access to health care and general education.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States⁶⁵

⁶⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁶⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The standards set in the above quoted articles on health care (Q.27) are higher than those set in the Reception Conditions Directive.

The most relevant aspect of the transposition, in which Spain goes well beyond the standards set in the Directive, is the automatic work permit for asylum seekers six months after lodging their asylum application, with no restrictions whatsoever.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.