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**Report of the fact-finding mission by Ambassador Tomáš Boček,  
Special Representative of the Secretary General on migration and refugees, to  
Spain, 18-24 March 2018**

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## EXECUTIVE SUMMARY

Spain has been a key destination and transit country on the Western Mediterranean migration route with a total number of 89,982 migrants and refugees arriving both by sea and land since the start of the migration crisis in 2014. Being on the frontline of arrivals to Europe, Spain has faced numerous complex challenges over the last three years, which have been accentuated by the fact that the borders of the autonomous cities of Melilla and Ceuta are the only land borders of the EU on the African continent.

Spain's migration policies are characterised by steady efforts aimed at stemming irregular migration flows, expanding processing and reception capacities for asylum-seekers, returning unauthorised migrants to their countries of origin, notably by building partnerships with origin and transit countries such as Morocco, as well as integrating refugees into the Spanish society. As significant political emphasis and financial investments are expected in the near future on illegal migration, preventative policies outside and at the EU's external borders as well as on policies of returning migrants in an irregular situation to their countries of origin, the situation in Spain can shed important light on the challenges and human rights implications of such policies.

The issue of migrants and refugees' access to Melilla and Ceuta highlights the challenges to the principle of non-*refoulement* which is a keystone of international human rights law and essential to the obligations to which member states have committed themselves under Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention on Human Rights (ECHR). Foreigners who attempt to enter into Melilla and Ceuta by jumping the fences along their land borders and are intercepted at and near the borders, are randomly returned to Morocco without being identified, having their needs assessed or being given the possibility to apply for asylum. This continues to be the case despite positive steps taken by the Spanish authorities to establish asylum offices in Melilla and in Ceuta. By contrast, unaccompanied children under 18 years old who manage to arrive in an irregular manner are placed in child-care institutions in the autonomous cities and offered a long term residency prospect in Spain.

Managing mixed migration flows involves a series of complex challenges for which there are no black and white responses. Yet, it is possible that responses reconcile all the conflicting legitimate goals, notably border control and security on the one hand and the protection of human rights of migrants and refugees in full compliance with Council of Europe standards on the other hand. Reinforced border controls at the EU's external border in Melilla and Ceuta are understandable in view of their particular geographical position. However, there are basic international human rights obligations which must be upheld and therefore every person arriving in Spain should be protected against *refoulement* and collective expulsion with a real

possibility to gain access to an effective and fair asylum procedure. This is essential to making sure that the right to seek asylum is guaranteed effectively and does not become a mere theoretical possibility.

Issues related to the reception of migrants in Melilla and Ceuta highlight the objective difficulties of containing migration flows within particular parts of a country. Asylum-seekers in Melilla and Ceuta are not able to move freely to mainland Spain. They are selectively transferred there, often after having spent several months in reception facilities, which generally operate beyond their capacities and offer living conditions which are less favourable than those in mainland Spain. The accommodation provided to unaccompanied children in the autonomous cities raises particular concerns due to heavily overcrowded facilities. In an effort to counter the irregular migration pull factor, these children are not permitted to go to mainland Spain until they turn 18 years old, which is when they are handed their residence permits and can continue their lives autonomously in the country. While it may be necessary to ensure that migrants and refugees stay in the cities of Melilla and Ceuta for the time that is necessary to ensure registration and access to the asylum procedure, containing migration flows in these cities for long periods of time is unsustainable given their limited reception capacities.

One of the main challenges that Spain faces is the return of unsuccessful asylum-seekers and migrants in an irregular situation to their countries of origin. This is mostly due to difficulties related to the identification of these persons as well as securing their travel documents from and ensuring their re-admission to their countries of origin. Like many other European countries, Spain resorts to the detention of migrants in an irregular situation to ensure that expulsion orders on them are executed. While this policy approach is not as such incompatible with Article 5 of the ECHR, the fact that the expulsion rate is average and that migrants in an irregular situation are released at the end of the maximum detention period of six months, and in certain cases even before that, calls for a reflection about the efficiency of detention as a tool to manage irregular migration. Effectuating returns of migrants in an irregular situation is not only a challenge for Spain but for the EU as a whole given that those who are not entitled to protection and who cannot be returned to their countries of origin have the possibility to circulate freely in EU countries.

Despite significant efforts made by the Spanish authorities to reinforce the capacities of asylum authorities, Spain has a large backlog of asylum applications and there are often delays during asylum procedures which leave persons in need of international protection in a precarious situation. However, the material conditions as well as the support offered to learn the Spanish language and various skills in the reception centre for asylum-seekers and refugees that we visited in mainland Spain, and of which asylum-seekers and refugees were highly appreciative, should be noted with praise. Children's enrolment in schools is also another positive indicator of the social inclusion of migrants and refugees in Spain. By contrast, access of

asylum-seekers and refugees to the labour market remains a challenge. The social and cultural integration of migrants and refugees is uneven across different regions in Spain. There are, nevertheless, a number of good practices such as awareness-raising activities in schools, partnerships with business enterprises to facilitate training and employment of refugees, as well as centres to facilitate the social inclusion of both refugees and migrants in an irregular situation through training, support for learning the Spanish language and participation in various cultural programmes.

## 1. CONTEXT OF THE MISSION

Spain has experienced a sharp increase in the number of migrants and refugees arriving in the country over the last three years, with 16,263 arriving in 2015; 14,094 in 2016; and 28,346 in 2017. They came from different countries, including Syria, North African countries, in particular Morocco and Algeria, as well as conflict-torn sub-Saharan countries. Migrants and refugees have reached Spain primarily by arriving by land or sea at either of the two autonomous cities of Melilla and Ceuta located in Northern Africa, or arriving by sea to mainland Spain. In the first half of 2018, the number of arrivals reached a total of 20,218.

Like other European countries which have been at the frontline of mass arrivals, Spain is faced with mixed flows of refugees and economic migrants. These flows have presented major challenges for Spanish authorities in terms of reconciling their responsibilities of border-control, protection of national security and the fight against crime on the one hand with their human rights obligations to protect refugees and treat all migrants, regardless of their status, humanely and with dignity on the other hand. The management of mixed migration flows is a very complex task which requires multi-dimensional responses that take into account county-specific contexts, including its geographical situation, and are capable of adapting to ever-changing circumstances while remaining fully anchored in the imperative of respect for human rights and rule of law.

It is against this background that I undertook my fact-finding mission to Spain with a two-fold objective; firstly to identify how the Council of Europe can support Spain in addressing the above-mentioned challenges, and secondly to continue my contribution in raising awareness and encouraging reflection in the Council of Europe on how to mainstream human rights protection in the complex processes of migration management.

I conducted this mission together with my Legal Adviser, Ms Elvana Thaçi, and my Programme Officer, Janeta Hanganu.

I would like to thank the Spanish authorities for their co-operation during our mission.

## 2. MEETINGS AND VISITS

During our mission we met with the Under Secretary of Interior together with representatives of the Office of Asylum and Refugee (*Oficina de Asilo y Refugio*, the OAR), the Secretary General of Immigration and Emigration, the Ambassador in Special Mission for Migration Issues as well as the Director for Spanish Citizens Abroad, Migratory and Consular Issues at the Ministry of Foreign Affairs and Co-operation, representatives of the Ministry of Health, the Ministry of Education, Culture and Sport, prosecutors of the Aliens Chamber, the Ombudsman, the Mayor of Malaga, the Mayor of Valencia, the Vice-President of the Council of the Generalitat Valenciana.[1]

We exchanged views with representatives of the UNHCR and UNICEF in Spain. We also met with a number of NGOs and lawyers active in providing assistance and advice to refugees and migrants.[2]

We visited centres for the temporary stay of foreigners and centres for unaccompanied children in the autonomous cities of Melilla and Ceuta as well as reception centres in Valencia and Madrid. We also visited immigration detention centres in Murcia and Madrid.

The programme of the fact-finding mission appears in the Appendix.

## 3. THE SITUATION IN MELILLA AND CEUTA

### 3.1. Preventing access to the territory

Asylum-seekers and migrants in an irregular situation enter into the autonomous cities of Melilla and Ceuta both through the land and sea borders. As regards land borders, Melilla is surrounded by a 12 km triple fence – the external and internal fences are six metres high and the middle one is a lower three dimensional barrier which is a structure of steel cables tied to stakes. The fence is equipped with sensors to detect movements towards its external part. When such movements are detected the *Guardia Civil* notifies the Moroccan authorities, which in turn often prevent people in the Moroccan territory from jumping the fence. The land border in Ceuta is also surrounded by an 8 km long double fence – the external and internal fences are six metres high and four meters apart, allowing for a vehicle to circulate between them. The fences are covered with anti-climbing material and equipped with movement detection capabilities (camera and thermic cameras). The *Guardia Civil* also ensures the maritime surveillance of the Spanish border around Ceuta. Whenever boats of migrants moving towards the Spanish waters are detected the *Guardia Civil* notifies the Royal Moroccan Navy which often intercepts migrants before they cross the border and returns them to Morocco.

On previous occasions, I have drawn attention to practices involving information

sharing by the border police with the relevant authorities of a neighbouring country regarding suspected unauthorised border crossings and the subsequent action of the authorities in the neighbouring country to intercept migrants and refugees before they cross the border. I have underlined the questions that these practices raise with regard to the right to seek asylum and the respect for the principle of non-*refoulement*.<sup>[3]</sup> It is legitimate that Council of Europe member states, in the exercise of their right to prevent unauthorised border crossings as well as to prevent and combat cross-border criminal activities co-operate with neighbouring countries including through the sharing of relevant information. However, as a matter of principle, member states should exercise human rights due diligence in the context of such co-operation. They should take into account the situation in their neighbouring countries and refrain from sharing information with or requesting the latter to intercept people before they reach member states' borders when they know, or should have known, that the intercepted persons would as a result be exposed to a real risk of torture or inhuman and degrading treatment or punishment and that they would not be given protection in the neighbouring countries.<sup>[4]</sup>

### 3.2. Summary returns

According to the Spanish Law 4/2000 on the rights and freedoms of aliens in Spain and their social integration (the Law on Aliens), foreigners who attempt to cross the border irregularly, including persons intercepted at and near the border, may be denied entry or may be rejected at the border in order to prevent their illegal entry into Spain.<sup>[5]</sup> In accordance with the Law on Aliens, their return shall in all cases be carried out in compliance with the international human rights standards; applications for international protection shall be submitted in dedicated places provided for that purpose at the border crossings. The *Guardia Civil* explained to us that attempts by foreigners to jump the fences happened on a daily basis, although not by massive groups of people as it had been frequently the case in 2016 and 2017. When foreigners attempt to jump the fences in both Melilla and Ceuta the *Guardia Civil* does not intervene unless they have climbed down the internal fences. In most of the cases foreigners endure physical injuries while jumping over the fences. This is the reason why the authorities have entered into a co-operation protocol with the Spanish Red Cross, which provides immediate medical assistance to intercepted foreigners.

The *Guardia Civil* explained to us that foreigners who jump the fences are usually violent and that they do not communicate with authorities but rather attempt to escape from them. The *Guardia Civil* also does not seek to establish any communication with foreigners. Hence, no claims for international protection are expressed by foreigners either while climbing or when intercepted at or near the border after jumping the fences. Shortly after receiving the Spanish Red Cross assistance they are returned to Morocco through special doors, which are spread throughout the border fences and are distinct from border-crossing points. Foreigners do not have access to interpreters, lawyers or the asylum offices located

at border crossing point. Finally, they are returned to Morocco without any identification or registration having taken place.

In a Chamber judgment, the European Court of Human Rights found that the immediate return to Morocco of Sub-Saharan migrants who were attempting to enter into Melilla amounted to a collective expulsion and held that there had been a violation of Article 4 Protocol 4 and Article 13 of the ECHR taken together with Article 4 Protocol 4.[6] The case has been referred to the Grand Chamber.[7]

Articles 2 and 3 of the ECHR entail an obligation on the part of Council of Europe member states not to return a person to his/her country of origin, any other country to which removal is to be effected or any other country to which he/she may subsequently be removed, where there are substantial grounds for believing that the person would run a real risk to his/her life or a real risk of being subjected to torture and other forms of ill-treatment. On the basis of the principle of non-*refoulement* enshrined in Article 33 of the 1951 Geneva Convention on the Status of Refugees and the relevant jurisprudence of the European Court of Human Rights[8], states are obliged to screen intercepted migrants with a view to identifying persons in need of protection, assessing those needs and enabling the relevant persons' access to asylum procedures.

While the Spanish Law on Aliens contains a general guarantee that the returns described above will be carried out in compliance with international human rights standards, in practice the *Guardia Civil* does not yet have a protocol on screening foreigners who irregularly cross the borders in Melilla and Ceuta which would provide instructions to its officers on identifying persons in need of international protection and taking necessary action regarding their access to a fair and efficient asylum procedure. As international bodies, including the Commissioner for Human Rights,[9] the CPT[10] and the UNHCR,[11] have called for the issuance of such instructions for some years it is now necessary that Spain takes action. The Council of Europe can provide its human rights expertise to ensure that the relevant instructions provide for the respect of the principle of non-*refoulement*, prohibit collective expulsion and contain the necessary procedural guarantees regarding access to a fair and effective asylum procedure.

#### 4. ACCESS TO THE ASYLUM PROCEDURE

Anyone who wishes to seek international protection in Spain must lodge a formal application with the competent authorities. In cases when the asylum seeker is at an airport, maritime port or land borders he/she must lodge a formal application with the border control authority. If the person is already on Spanish territory he/she must lodge a formal application with the OAR, in Detention Centres for Foreigners (*Centro de Internamiento de Extranjeros*, CIEs) or police stations. The admissibility and merits of applications lodged at the borders and in CIEs are assessed within shorter periods of time compared to applications lodged in Spanish territory, which

are examined under the regular procedure. However, procedural safeguards for applications lodged at the border or in CIEs concerning the presence of interpreters and legal assistance are the same as those applicable under the regular procedure.

#### 4.1. At the land border

At the Beni Enzar border-crossing point in Melilla we were informed that the persons who crossed the border in a regular manner in order to seek asylum are mostly Syrians, Palestinians, Algerians or nationals of other Northern African countries. They are given an appointment for a preliminary interview by Ministry of Interior officials within two or three days, but no later than nine days, from the time they express their intention to seek asylum. The registration of asylum applications and a preliminary interview takes place in dedicated premises adjacent to Beni Enzar.[12] At the time of our visit there had been around 700 asylum requests for 2018. The OAR in Madrid usually makes a decision on the admissibility of the applications within 48 hours of the registration of the application.[13] The admissibility rate is rather high at 90%.[14] After a decision on admissibility the merits of the asylum application is examined with priority within three months under the regular asylum procedure (see section 4.3. below).[15] At the El Trajal border-crossing point in Ceuta we were informed by the Spanish authorities that no single asylum application had been lodged since 1993.

A number of reports have underlined that persons from sub-Saharan Africa are effectively prevented by Moroccan authorities from approaching regular border crossing points, notably in Melilla (see section 3.1. above).[16] Consequently, they do not have access to the asylum procedure. Spanish authorities explained that one of the possible reasons why sub-Saharan Africans cannot approach the border are the sizeable daily flows of persons involved in the so-called “atypical trade” who cross the border daily into and out of Melilla.[17] While I understand the difficulties that the Spanish authorities encounter in managing such flows I was not convinced that they affect the ability of sub-Saharan Africans to approach the Spanish border. Without any possibility for legal and safe access to the Spanish territory, persons from sub-Saharan Africa, including women and young children, turn to organised crime networks, hiding in cars or embarking on rafts to gain access to the autonomous cities of Melilla and Ceuta, thereby exposing themselves to risks of trafficking in human beings, violence and sexual abuse. It is, therefore, important that the Spanish authorities provide to persons in need of international protection the possibility to access the Spanish territory safely so that they can submit their asylum claims having due regard to the measures recommended by GRETA on detecting and preventing trafficking in human beings through border control measures, in the context of increased migration.[18]

#### 4.2. In detention

Migrants in an irregular situation who are detained in CIEs pending their expulsion have the possibility to lodge their asylum applications whose admissibility and merits, as in the case of applications lodged at the border, are examined with

priority.[19] The application rate by detainees in the Sangonera la Verde CIE (Murcia) was between 25-30%. In the Aluche CIE (Madrid), the number of asylum applications in 2018 was significantly lower than in 2017, with 130 and 354 applications respectively. When a detainee expresses his/her wish to seek asylum, usually by depositing a letter in a dedicated mailbox in the CIE, an interview is carried out by the police officers in the CIE to register his/her application on the basis of a questionnaire issued by the OAR. An interpreter and a lawyer from the local bar association are present during the interview. The OAR makes a decision regarding the admissibility of the application within 72 hours. Where the application is considered as admissible the person concerned is released from the CIE and the merits of the application is examined within a period of three months under the regular procedure (see section 4.3. below). In cases when the OAR finds the applications inadmissible a request for re-examination can be filed with the OAR within 48 hours; a second decision of inadmissibility can be appealed before administrative courts, with no automatic suspensive effect.

We were informed by Spanish authorities that the admissibility and recognition rate in CIEs is very low although we did not receive concrete data. It appeared that there was an underlying opinion among the National Police officers in both CIEs that migrants in an irregular situation who are detained pending expulsion usually abuse the asylum procedures.[20] We were able to observe in discussions with some of the detainees in both CIEs that we visited that they had no intention to apply for asylum. Nationals of Morocco or Algeria maintained that their asylum applications would not be successful taking into account previous experiences of their fellow nationals. Other detainees mostly from sub-Saharan Africa did not see the interest in applying for asylum.[21] Nonetheless, detainees should be informed about asylum procedures in a clear and adequate manner. We were not entirely convinced that some of the detainees to who we spoke were aware of what it means to apply for asylum in Spain and of the consequences that an asylum application would have in terms of their legal status in Spain. In this connection, it should be noted that concerns have been raised in recent years, notably by the Spanish Ombudsman, regarding the inadequacy of information on asylum that had been provided to detainees in CIEs.[22]

#### 4.3. Regular procedure

Those who arrive in mainland Spain by boats or other ways are usually taken by the National Police to the closest police station to establish their identities.[23] They can be held in these premises for a maximum period of 72 hours.[24] In cases when they seek asylum, an interview is carried out to register their asylum claims in the presence of a lawyer from the local bar association and an interpreter. The interview should be carried out by OAR officials. However, in the recent past in view of mass arrivals the National Police had had to carry out interviews in the premises of police stations. The OAR should decide on the admissibility of asylum applications within one month. Upon a proposal by OAR the Inter-Ministerial Asylum and Refugee

Commission[25] decides on the merits of the application within a period of six months; the decision is issued under the authority of the Minister of Interior. An administrative appeal can be lodged with the Ministry of Interior on both admissibility and in-merits decisions; judicial appeal can be lodged only against a rejection decision on the merits. All these appeals have no automatic suspensive effect.

The Spanish authorities were unprepared for the massive arrival of asylum-seekers and refugees in 2017. Local lawyers and NGOs in Malaga informed us that the information provided to new arrivals on their rights and on how to access the asylum procedure had not always been available in the languages they spoke or adapted to their levels of education. Also, quite often appointments for interviews to formalise the asylum applications were fixed late, sometimes as late as one or two months from the time of asylum-seekers' arrival. In Madrid, we were also informed by NGOs that asylum-seekers are given an appointment with OAR officials after more than six months of the time that they expressed their intention to seek asylum. In these situations asylum-seekers were left in very precarious situations as they could not access the reception system and could not receive the benefits related to the status of asylum-seekers. In our discussions with the Spanish Ombudsman, the UNHCR as well as NGOs, we were told that a high number of asylum-seekers, estimated at 8000, were waiting, often in destitution or precarious living conditions, for an interview appointment to be fixed, which is when their applications can be formally registered.

We also received information from local lawyers that there had been cases where police officers in interviews held with refugees or migrants – who arrived in large groups in the last two years, notably those arriving by boats in Andalusia – in the context of formalising their asylum applications had often explicitly discouraged them to pursue their asylum claims. In Malaga we were informed by local lawyers and NGOs that during the interview at police stations or premises of ports of arrival, interpretation had been provided only in English and French and in some cases it was of a poor quality. Also, in certain cases legal aid had not been accessible or had been made available late in the process. Nonetheless, the capacity of the National Police to register and process asylum applications is improving at a remarkable pace, which was acknowledged by different actors including the Spanish Ombudsman.

Decision-making on asylum applications is often longer than the six-month time period set by law. This has resulted in a backlog of pending asylum applications with the OAR. At the time of our visit there were over 40, 000 pending asylum applications. Delays were primarily linked to the institutional capacities of the OAR, which despite an increase in the number of staff in the two last years, struggles to meet the needs. Also, a large number of the pending cases are complex in nature and present difficulties in terms of establishing the facts or assessing the situation in the countries of origin of the applicants. Applicants from sub-Saharan countries face longer waiting times until a decision is made on their applications[26] while priority

seems to be given to applications from Syrian nationals and those in vulnerable situations.

Long waiting periods and prolonged decision-making on asylum applications creates a state of uncertainty for asylum-seekers and exposes them to risks of destitution, exploitation and trafficking in human beings. These issues are recognised by the Spanish authorities who are working to tackle the backlog of asylum applications, notably by strengthening the capacity of OAR.

## 5. RECEPTION

In Melilla and Ceuta asylum-seekers are accommodated in Centres for the Temporary Stay of Foreigners (*Centro de Estancia Temporal de Inmigrantes*, CETIs). In mainland Spain asylum-seekers are accommodated in Refugee Reception Centres (*Centros de acogida de refugiados*, CARs) as well as reception centres or apartments managed by NGOs.

### 5.1. Centres for the Temporary Stay of Foreigners

Those who are admitted in the territories of Melilla and Ceuta are placed within 72 hours of their arrival in CETIs, which were originally designed to accommodate migrants in an irregular situation, mostly single men, arriving to the autonomous cities. CETIs are managed by the Ministry of Employment and Social Security, which is responsible for the national network of reception of migrants and refugees in Spain. At the time of our visit, CETIs accommodated both asylum-seekers and migrants in an irregular situation pending their transfer to mainland Spain, which can range from two months to more than a year, as was the case of some of the people we met there. CETIs function as semi-opened centres with access restrictions applicable during the night.[27]

As both CETIs in Melilla and Ceuta were operating at their maximum occupancy level at the time of our visit the accommodation standards were inadequate.[28] Families were not accommodated separately; often mothers with children from different families were accommodated together in rather small rooms. The persons with whom we spoke did not raise any significant concerns regarding the material conditions in both CETIs that we visited. However, we were able to observe during our mission that they fell below the standards in other reception centres for asylum-seekers in mainland Spain notably as regards overcrowding

The continued overcrowding of CETIs raises serious concerns regarding the exposure of women and children to risks of violence and exploitation. In Ceuta we were informed by the authorities managing the CETI that most of the young Sub-Saharan women living there were suspected to have been victims of trafficking in human beings. While there are eight social workers and one psychologist, who help *inter alia* to identify victims of human trafficking in this CETI, there are very few cases in which women declare themselves as victims of trafficking. As

recommended by GRETA, it is necessary that Spanish authorities pay attention to the proactive detection of victims of trafficking among asylum-seekers and migrants in an irregular situation allowing sufficient time to gather necessary information and taking into account their traumatic experiences. The staff working in CETIs should be provided with training on the identification of victims of trafficking in human beings and their rights.[29]

As regards activities for residents in CETIs, it is mainly NGOs which organise primary education courses for children as well as Spanish language courses. Development workshops for adults were organised in the CETI in Melilla. We were informed that 64 out of the 180 children living in the CETI in Melilla go to local school. In Ceuta, we were also informed that children go to local schools during the time they stay in the CETI, although we were not able to receive more concrete information as regards the school enrolment rate. School attendance numbers seem to be quite low due to the presumed temporary nature of the stay for most children in the centre. Nonetheless, in practice the length of stay in CETIs can be for months and sometimes more than a year. Therefore, there is a need for sustainable arrangements to be made for children's enrolment in and attendance of local schools, taking into account their age and developmental needs.

Overall, it is necessary that the Spanish authorities ensure that CETIs in Ceuta and Melilla have the same standards in terms of living conditions, education, health care, language and training courses which asylum-seekers are entitled to and receive in mainland Spain, as explained below.

## 5.2. Refugee Reception Centres

Those who seek asylum upon arrival in Spanish mainland are held for a maximum of 72 hours in police facilities to register their asylum applications. Afterwards they are accommodated in CARs, reception centres or apartments managed by NGOs.[30] Both CARs and NGO-run centres operate under the authority of the Ministry of Employment and Social Security. We received information from NGOs during our visit that in the last two years, notably in cases of massive arrivals by boats, asylum-seekers had been transferred directly from police facilities to detention centres (see also section 7 below) instead of reception centres. While acknowledging the occurrence of such incidents in the past, the Ministry of Employment and Social Security informed us that it was working on a special protocol on mass arrivals (i.e. more than 500 persons), notably regarding their immediate inclusion in the reception system.

At the time of our visit, the largest number of asylum-seekers was accommodated in reception centres and apartments which are managed by NGOs, namely the Red Cross, the Spanish Refugee Aid Commission (CEAR) and the Spanish Catholic Migration Commission Association (ACCEM) on the basis of arrangements with and funded by the Ministry of Employment and Social Security. NGO-run centres had a capacity of 7,300 places whereas those run by the state have a capacity of 416 places. All these centres must offer the same level of living conditions and services

according to a manual on service provision issued by the Ministry of Employment and Social Security. This authority monitors compliance with these standards in NGO-run centres.

We visited the Mislata CAR, in Valencia and the Alcobendas CAR in Madrid. The first centre accommodated 105 asylum-seekers; many were Syrian nationals relocated to Spain via the EU's relocation programme. Alcobendas accommodated 82 asylum-seekers from Venezuela, Syria, Ukraine, Eritrea and Colombia.[31] We were very impressed by the material conditions in both these centres. The family unity was respected in all cases. Asylum-seekers had access to health care in local general and specialised institutions. Children of all ages were enrolled in local schools. Spanish language courses and computer training were organised regularly in both centres. In Mislata there were vocational training courses for cooking, hairdressing and in principle other courses in different areas could be organised provided that there was sufficient demand by asylum-seekers. In Alcobendas a special training to seek employment was offered. A psychologist, a cultural mediator and social worker provided specialised support to asylum-seekers in both centres. The psychological support is especially necessary to identify and to refer to assistance services victims of trafficking in human beings; such cases had been recorded in Alcobendas. All asylum-seekers and refugees to whom we spoke in CARs expressed their satisfaction about the living conditions provided by these centres, their gratitude for the support offered to them by the Spanish authorities and their appreciation for the management of these centres.

## 6. RESTRICTIONS OF FREEDOM OF MOVEMENT

Despite the fact that both Melilla and Ceuta are part of the Schengen area, asylum-seekers and migrants in an irregular situation who stay in the CETIs wishing to travel to and/or from mainland Spain cannot do so unless they are granted permission by the National Police.[32] The transfer of asylum-seekers from the autonomous cities to reception centres in mainland Spain is carried out under the authority of the Ministry of Employment and Social Security. Migrants in an irregular situation who have not applied for asylum are transferred to detention centres in mainland by the National Police (see section 7 below). Asylum-seekers who are transferred to mainland are often selected according to the following criteria: the time of their arrival - i.e. on first come first transferred basis – their vulnerable situation, the completion of any health care procedures, the reunion in the CETIs of split families[33] and the availability of reception spaces in mainland.

The restrictions on asylum-seekers' freedom of movement from the autonomous cities of Melilla and Ceuta to other parts of Spain are questionable in view of Article 2 Protocol 4 of the ECHR (freedom of movement). During our visit we were not able to receive information about the regulatory framework governing the restrictions on asylum-seekers' freedom of movement. As noted above the living conditions of

asylum-seekers in the CETIs in Melilla and Ceuta are less favourable compared to those in other parts of Spain (see section 5.1). Therefore, the restrictions on freedom of movement may result in prolonged stays of asylum-seekers in CETIs. Also, the situation raises concerns about discrimination of these asylum-seekers because no restrictions of freedom of movement apply to asylum-seekers who live in mainland Spain. Other discrimination concerns relate to the nationalities of asylum-seekers who are transferred from CETIs to mainland Spain. There was a prevailing perception among asylum-seekers to whom we spoke that it is mostly Syrians in both CETIs who are transferred with priority, whereas asylum-seekers of other nationalities, especially Algerians and Moroccans spend longer periods of time, often several months, in the autonomous cities of Melilla and Ceuta.

While not underestimating the need to manage transfers from Melilla and Ceuta to mainland Spain in a manner that takes into account the capacities of the Spanish reception system, the Spanish authorities should take the necessary steps to ensure that such transfers are organised with due regard for Article 2 Protocol 4 of the ECHR in a transparent way and that justification is provided for any preferential or differentiated treatment of asylum-seekers.

## 7. DETENTION PENDING EXPULSION

### 7.1. General considerations

Migrants who enter into Melilla or Ceuta or who arrive in mainland Spain by boats in an irregular manner are usually taken to the closest police station by the National Police. When they do not seek international protection they can be detained for purposes of expulsion for violations of the Law on Aliens, including presence in the Spanish territory without proper documentation or authorisation, posing a threat to public order, or taking part in illegal migration, for a maximum period of 72 hours.[34] A judge may order the detention of migrants who cannot be expelled by authorities within 72 hours of the issuance of the relevant expulsion orders.[35] Detention can also be ordered by a judge when a migrant does not leave the country within the time limit set in the expulsion order issued by the Government Sub-Delegate or Delegate. Migrants who have been convicted for criminal offences may also be detained by order of a judge for purposes of expulsion where the Criminal Code provides for expulsion as a substitute for prison sentences of more than a year up to six years.

In all the situations described above migrants are detained in CIEs. We visited the Sagonera La Verde CIE in Murcia and the Aluche CIE in Madrid. The first CIE was holding 80 men, for a capacity of 138 places. The majority of the detainees were from Algeria and Sub-Saharan African countries, while few came from Morocco, Libya, Romania and Ukraine. The Aluche CIE was holding 136 migrants, including eight women, for a capacity of 240 places. Mostly persons who had committed

criminal offences and whose sentences had been commuted into expulsion orders were held in Aluche. However, lately migrants who had arrived in Spain by boat, mostly Algerians, Moroccans and a few of them from sub-Saharan African countries, had been placed there.

In the Aluche CIE we were informed that, upon decision of a judge, detention could be replaced with alternative measures such as the withholding of the migrant's passport and regular presentation before the police. Alternative measures had been applied in 20% of cases. Once arrangements for the expulsion of the migrants concerned were made they were detained in dedicated facilities within the CIE, 72 hours prior to their expulsion.

Children, whether accompanied or not, are not placed in administrative detention. Whenever an undocumented foreigner in administrative detention claims to be a child, the police officers reports the case to the competent prosecutor who orders an age-assessment procedure to be carried out. Where as a result of the procedure the person is determined as a child immediate measures are taken to transfer him/her to the authorities responsible for their care. We were informed that both CIEs that we visited did not have any unaccompanied children present in their premises. However, during our visit in Spain we received information from NGOs that in the past two years unaccompanied migrant children had occasionally been placed in detention as a result of deficient age-assessment procedures (see section 8.2. below) or because of the unpreparedness of the Spanish authorities to cope with massive arrivals.[36]

#### 7.2. Length of detention

The maximum period of administrative detention for purposes of expulsion according to the Spanish law is 60 days. If expulsions cannot be carried out or if authorities consider that they cannot assure deportation within this time period migrants are released from CIEs. The average detention period was 30-40 days in the Aluche CIE and, according to information provided by authorities, 24 days in other CIEs. Civil society organisations raised the concern that authorities place in detention migrants in an irregular situation, especially those from sub-Saharan African countries, for whom it is clear that they cannot be expelled due to well-known difficulties regarding their repatriation mostly related to the lack of bilateral agreements with the countries of origin of these persons. However, the Ministry of Interior reassured our delegation that during detention all the necessary efforts are made in co-operation with the embassies of migrants' countries of origin to have travel documents issued to them and to carry out the necessary repatriation procedures. The expulsion rate in the Aluche CIE was 40-50%. In certain cases the authorities had released detainees before the 60 day time limit as it had become clear that expulsion efforts would not be successful.

#### 7.3. Lawyer's assistance and interpretation

The majority of detainees interviewed by our delegation indicated that when they

were held by the police prior to their placement in CIEs they had had access to a lawyer and an interpreter. However, NGOs and lawyers with whom we spoke in Malaga provided various accounts about events in the recent past, notably in connection with the placement of hundreds of migrants in November 2017 in the Archidona prison as well as in cases of arrivals of migrants in large numbers by boats. Reportedly, interpretation in police stations was provided only in English and French and was of a poor quality. Also, lawyers had often experienced difficulties in meeting with migrants who were accommodated in the Archidona prison such as long waiting times before the meetings took place.

#### 7.4. Treatment

The persons with whom we spoke in both CIEs that we visited did not make any allegations of ill-treatment. We were informed by the National Police that in the past there had been incidents of violence amongst detainees or violence of detainees against police officers, which warranted the intervention of the National Police. Any use of force by its officers or temporary placement of detainees in an isolation cell following their violent behaviour was reported to the competent supervisory judge. Detainees could file their complaints against police officers or on other matters with the directors of CIEs in a dedicated mailbox. Also, detainees could send any complaint that they might have to the supervisory judge using a separate dedicated mailbox.

#### 7.5. Conditions

The layout and design of the Aluche CIE displayed a carceral environment.[37] Given that the number of detainees was lower than the capacities in both CIEs that we visited, there were no issues regarding the rooms' occupancy levels. The rooms in Sangonera la Verde had small barred windows, which did not permit sufficient access to natural light. They were equipped with a call system to permit detainees' access to the toilets during the times they were locked in their cells. The rooms in the Aluche CIE had more access to natural light as well as individual toilets. In the same CIE we received complaints by some of the detainees that the rooms were cold during the night; we also noticed during our visit that it was cold in the rooms and in the common areas. In Sangonera la Verde we were not made aware about any leisure or other activities for detainees; they spent two hours in the morning and three hours in the afternoon in the common outdoor and indoor areas walking or sitting together. In the Aluche CIE we met with a group of women who explained to us that paper work was offered as a leisure activity.[38]

As regards health care, we were informed that two doctors worked in shifts in Sangonera la Verde. A doctor and a nurse were present daily in Aluche from 8:00-22:00. In cases of health emergencies during the night the police officers called the ambulance. Access to specialised health care was in general ensured to detainees through external consultations. However, we were not able to receive concrete information about the frequency of such consultations in the recent past. In

Aluche four social workers and three mediators provided social assistance to detainees, such as cultural mediation mostly in the context of conflicts amongst the detainees. We were informed that there had been cases of suspicion of trafficking in human beings, mostly relating to women from Sub-Saharan Africa which had been reported to the competent authorities.

Most of the detainees to whom we spoke reported to us that they had kept the contacts of the lawyers who provided legal aid to them when they were taken to police stations, usually upon their arrival, or when they appeared before the judge ordering their detention. They did not, however, plan to file any appeals regarding their detention given that their hope was to be released at the end of the maximum period of detention of 60 days after unsuccessful expulsion.

In the Aluche CIE migrants in an irregular situation were detained in the same facilities as convicts for criminal offences whose sentences were commuted into expulsion orders. Persons detained pending their expulsion should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation.[39] Also, in both CIEs that we visited migrants in an irregular situation who lodged asylum applications were held in the same facilities together with those who did not seek asylum. While it is acknowledged that an accelerated procedure is followed when such applications are lodged, asylum-seekers should, pursuant to CPT standards, be kept separately from detainees who have not applied for international protection.[40]

## 8. UNACCOMPANIED CHILDREN

### 8.1. Accommodation

Unaccompanied children arriving in Melilla and Ceuta were accommodated in special centres.[41] The centre La Purísima in Melilla, with a capacity of 350 places, was accommodating 535 boys at the time of our visit. In some of the dormitories, up to 30 boys were sleeping in very small rooms, in cramped conditions with beds touching each other; one of the rooms in particular had a very small window which prevented access to sufficient natural light and air. In some other rooms boys were also sleeping on mattresses on the floor. The rooms were locked during the time that children were at school or doing other activities in the centre. Most of the children in the centre came from Morocco and Sub-Saharan countries. Occupancy levels were also serious at the unaccompanied children's centre 'La Esperanza' in Ceuta, where boys were sleeping in very small rooms, often in double of their occupancy on mattresses on the floor. Parts of this centre were being renovated at the time of our visit.

The regional authorities, which are responsible for managing these centres, recognised the seriousness of overcrowding and appealed for international solutions such as repatriation of unaccompanied children to their families in their

countries of origin. While acknowledging the difficulties encountered by authorities to manage this situation, it should be underlined that the current situation of accommodation of unaccompanied children raises questions under Article 3 of the ECHR. Spanish authorities should take immediate measures to ensure their accommodation in appropriate conditions.

Our delegation did not receive any complaints by children regarding the quantity or quality of food. Also, on a more positive note, unaccompanied children go to local schools in Melilla and Ceuta on a regular basis and mix together with local children.

One issue of great concern in both Melilla and Ceuta is that a number of unaccompanied children live in the streets. The regional authorities in Melilla believed that around 100 unaccompanied children lived in the port area as they frequently try to board ferries heading to mainland Spain. In the port area in Ceuta, we met a group of 10 unaccompanied boys, some of them clearly appearing as underage, while attempting to cross over the port's fence. They explained to us that they had been living on the streets for months, some for more than a year, surviving on the food and hygiene support provided by the NGO ACCEM. Their main objective was to get on board of a ferry to mainland Spain. The situation of children living in the streets of both Melilla and Ceuta is of serious concern in view of Article 3 of the ECHR. They are exposed to risks of violence, sexual abuse and violence, exploitation and trafficking in human beings. Measures should be taken to include them in the child-protection system of the country.

In mainland Spain, unaccompanied migrant children are accommodated in child protection centres together with Spanish children who are under the guardianship of regional authorities. In Valencia, the regional authorities were actively engaging with the local population to place unaccompanied children of 13 or 14 years old in foster families. An awareness-raising campaign: 'Better in our family – hosting leads to growth' had been organised, targeting primarily Muslim women and families in order to ensure a smoother integration of migrant unaccompanied children with a Muslim background. Despite the fact that the process of placing children in foster families is slow, the practice itself is worth underlining as one holding potential for a full integration of unaccompanied children in receiving societies.

Efforts to avoid the segregation of unaccompanied migrant children in mainland Spain should be commended. However, the situation in Melilla and Ceuta is very different. Although the specific concerns relating to the management of migration in these two autonomous cities are understandable, it should be noted that they do not provide valid justification for a different treatment of unaccompanied children. Therefore, I encourage the Spanish authorities to implement the same policies regarding the accommodation of unaccompanied children across different regions in Spain.

## 8.2. Age-assessment

Age-assessment procedures are governed by the Framework Protocol for

Unaccompanied Foreign Minors of October 2014.[42] According to this protocol, whenever there is a doubt about the age of a foreigner the General Prosecutor's Office, upon receiving communication from a law enforcement authority at the national or local level or a local institution, can order that an age-assessment procedure be carried out. The procedure includes medical examinations such as an X-ray of the wrist, a lower molar test or a collar bone test. In all cases it is the medical doctors who decide independently which medical tests are appropriate to be applied. At the end of the procedure the General Prosecutor's Office issues a decree establishing the age of the person and when he/she is considered as a child declaring that he/she be placed under the care of the competent regional authority. Although the decree cannot be challenged before courts[43] its effects can, notably in the context of challenging the cessation of guardianship of a child or requesting his/her placement under the guardianship of child-care authorities.

During our meeting with representatives of the General Prosecutor's Office we raised several points expressed by international bodies[44] and concerns raised by NGOs, including the application of age-assessment procedures in cases when foreigners had identification documents proving the fact that they were children, instances of manifestly arbitrary decision-making by medical doctors,[45] the fact that persons undergoing age-assessment procedures were not heard before the issuing of a decree on their age, the lack of legal assistance during age-assessment procedures, the lack of effective access to courts as well as the reported cases of unaccompanied children being kept in detention in CIEs. We were not convinced by the explanations given which dismissed the veracity of all these concerns. If children are left outside of the protection system they may fall victim to violence, sexual abuse and exploitation and trafficking in human beings. Given the irreversible consequences that such situations would have for their well-being and development, I would encourage a proactive approach to investigating and addressing concerns raised by international bodies and NGOs with a view to making sure that the principles of presumption of minority and the protection of rights and the best interests of the child are effectively respected.

### 8.3. Guardianship

Persons who are identified or declared as children following an age-assessment procedure and who are not accompanied are automatically placed under the guardianship of the competent regional authorities. In cases when age-assessment procedures establish that an undocumented foreigner should be considered as an adult the person concerned can, as mentioned above, request placement under guardianship before courts. Judicial proceedings are sometimes long with judgments arriving at times after the person concerned has reached the age of maturity.[46] Pending a decision by the courts he/she is left without any protection or support. Also, in Andalusia, we received reports by NGOs that children who are very close to reaching the maturity age (between 17 and 18 years old) are not placed under the guardianship of regional authorities so that ultimately they do not obtain

residence permits in Spain (see also section 8.4 below).

In addition to responsibilities regarding the accommodation of unaccompanied children, their social support, access to education and health care, regional authorities are responsible for informing unaccompanied children about their right to seek international protection, for appointing a representative who assists the children during asylum procedures and acts on their behalf. The number of asylum applications by unaccompanied children has been low in the last years.[47] A possible explanation for this, notably as regards Melilla and Ceuta, could be the specific migration plans of a high number of unaccompanied children arriving to these two autonomous cities. In our interviews with a number of children in the centres La Purísima and Esperanza we understood that, generally speaking, they had not fled from situations of risks to their lives or well-being. They had arrived to Spain with a clear migration intention, which was to obtain their residence permit once they had reached majority[48] and eventually reunite with family members in Spain, bringing them over from their countries of origins.

This particular migration profile of unaccompanied children in Melilla and Ceuta raises a new challenge for the Spanish authorities, which explained to us that one of the aims of the guardianship system in Spain was to ensure the reintegration of unaccompanied children in their families wherever applicable. However, the experience of repatriation of unaccompanied children so far has been rather unsuccessful in practice for a number of reasons, primarily because of a lack of international co-operation by the children's countries of origins and difficulties to prove family ties. While acknowledging these challenges of irregular migration, it is necessary to make sure that every unaccompanied child arriving in Spain has automatic access to care arrangements benefiting immediately from an assessment of his/her needs, a determination of his/her best interests and an appropriate developmental and educational plan.

#### 8.4. Transition to adulthood

When unaccompanied children reach the age of 18 they are given their residence permits, which are issued by the Government's Delegation or Sub-Delegation. Work permits are issued by the same authority with priority only if regional authorities request their issuance at the time requesting residence permits. The regional authorities in Valencia explained to us that the process of issuing residence permits to unaccompanied children is sometimes slow, which prolongs their residence in child protection centres. Also, in Andalusia, we received reports by NGOs that in some cases unaccompanied children who are close to turning 18 years old are not provided with a residence permit, which exposes them to expulsion proceedings and, potentially, detention. Similarly in Valencia stateless unaccompanied children are in certain cases not provided with a residence permit which leaves them in a limbo situation.

Generally speaking, after leaving the guardianship system young adult migrants are provided with very little support to build their lives independently in Spain. In

Valencia for example they receive only Spanish language training but no other types of support. In interviews with children in Ceuta we learned that, upon reaching the majority age, they would receive together with their residency permits their health cards, their education certificates and, if their behaviour in the children's centre had been good, a ferry ticket to go to mainland Spain. In Malaga we learnt that there are no measures in place to support young migrants out of the guardianship system, for example with regard to their accommodation or integration in the labour market. Consequently, they risk living in destitution in the streets, being exploited and getting involved in criminal activities. It is, therefore, necessary that support measures are put in place for a transitional period for young migrants after they turn 18, in particular regarding their development, accommodation, access to essential services including food and health care, entry and performance in the labour market as well as their social integration and "life projects".[49]

## 9. INTEGRATION ISSUES

### 9.1. Asylum-seekers and refugees

Once their applications have been declared admissible by the OAR, asylum-seekers obtain a document, commonly known as the red card, which certifies their status as asylum-seekers and authorises them to work. After six months of accommodation in CARs or NGO-run centres, asylum-seekers and those granted international protection are accommodated in apartments subsidised by the Ministry of Employment and Social Security for a maximum period of one year and a half.[50] The same institution subsidises their living costs for the same period of time, often through specific arrangements with NGOs such as the Red Cross and ACCEM. After this period of time refugees receive social support for unemployment as any other Spanish citizen. In Malaga, we were informed that in the absence of the needed subsidies from the central government the City Council had to buy apartments for around 660 refugees relocated from Greece and Italy, with revenue generated from local taxes. The City Council also substituted for the social allowance that these refugees were entitled to receive from central government funds.

A number of asylum-seekers whose appointments for interviews are scheduled months after their arrival (see section 4.3. above) are left outside of the reception and support system. We received reports by NGOs that many of them live in destitution, without access to health care and are vulnerable to exploitation in the labour market. The Spanish authorities should take measures to ensure that those who have been scheduled for an asylum interview have also access to the CARs and to the health care system.

While asylum-seekers and refugees are entitled to work, in practice they encounter serious difficulties in finding jobs. This is primarily because of the general

employment situation in the country. We were nevertheless impressed by the support given to refugees in Malaga by the City Council which has entered in partnerships with around 230 local companies to facilitate the training of refugees in different skills and their subsequent employment. We look forward to receiving more information on the results of these partnerships once they start being rolled out.

### 9.2. The health care situation of migrants in an irregular situation

No reliable up-to-date data are available on the stocks and flows of migrants in an irregular situation in Spain. In 2012, in the context of the implementation of Spanish national health system reform[51], in the context of which migrants who did not have residence permits were excluded from the health care system, the Spanish government estimated that by 1 September 2012, 873, 000 health cards had been withdrawn. About half a million were withdrawn from people no longer in the country, 160, 000 from migrants in an irregular situation and 200, 000 from EU citizens not entitled to healthcare under the new rules.[52] According to this reform there were only few exceptions regarding access to health care of migrants in an irregular situation, namely emergency care in the case of serious illness or accident. Also, women during pregnancy, birth and post-partum and children up to 18 years old had access to health care.

A number of autonomous regions, such as Andalusia, have declined to implement the 2012 reform or applied it partially or with exceptions, such as Valencia and Madrid, leading to an uneven social protection of migrants in an irregular situation throughout the country. The negative impact of the reform on migrants' access to health care has raised serious concerns about the deterioration of health conditions amongst migrants in an irregular situation, including an estimated 15% increase in the mortality rate.[53]

However, recent reports regarding plans of the Spanish Government to restore health care for undocumented migrants should be noted.[54] This is a welcome step which would offer an opportunity to ensure follow-up to recommendations of international bodies, to thoroughly evaluate the impact of the implementation of the health reform of 2012 and to carry out the adjustments necessary to guarantee the availability, accessibility and affordability of health care services to migrants in an irregular situation.[55] In this context, the Council of Europe can offer its human rights expertise regarding follow-up measures with a view to ensuring that migrants in an irregular situation have access to all necessary health services without any discrimination, in full compliance with the European Social Charter.

### 9.3. Employment

In the first quarter of 2018, the unemployment rate among foreign-nationals stood at 24,2% while that of the Spanish population was 15,7%.[56] The situation of employment of migrants varies by region. In the Community of Madrid, which is economically strong, 71% of foreigners were employed in 2016. The unemployment rate in the same year (13%) has dropped by more than a half compared to 2013

(30,7%).[57] Depending on the labour market in the region where they live migrants work in the tourism sector, in the construction industry, in shops or engage in activities such as collecting and selling metal. Women, especially those from Latin American countries, work as cleaners in private households. Migrants in an irregular situation work mostly in the agricultural and tourism sectors, often without any contractual arrangements, which leaves them vulnerable to exploitation. It is, therefore, necessary that GRETA's recommendations to Spanish authorities to strengthen their efforts to prevent trafficking in human beings for the purpose of labour exploitation concerning migrant workers are given follow-up. [58]

In some cases, local authorities who are committed to improving the situation of migrants in an irregular situation and facilitating their social and cultural integration with the local population, have taken concrete steps to regularise their situation. In Malaga, where an estimated 10% of migrants are undocumented, the City Council frequently reaches out to companies in order to facilitate the conclusion of work contracts for these migrants, which is the first step towards their regularisation. We were informed by the Ministry of Employment and Social Affairs that in 2017 there had been 31 000 cases in which migrants in an irregular situation were able to regularise their situation in Spain, mostly on grounds of existence of an employment contract or family ties. Spanish authorities should continue to strengthen their efforts to provide migrants in an irregular situation with pathways towards legal status building on their positive experiences of regularising 994 574 foreigners between 2000 and 2005 in Spain.[59]

#### 9.4. Social and cultural integration

As for many other issues discussed in this report, the situation of the social and cultural integration of migrants and refugees is uneven across different regions in Spain because of a number of factors. It should be noted, however, that during our visit we perceived a certain disconnection and, at times, lack of co-operation among central authorities on the one hand and regional and local authorities on the other hand. As already underlined by ECRI it is important that Spain develops a coherent integration strategy by means of co-operation of central, regional and local authorities throughout the country in order to achieve good results for all migrants.[60]

Good practices which could provide a solid basis for such a strategic approach exist. For example, the Malaga City Council invests in apartments for refugees which are dispersed in different areas of the city in order to promote their integration with the Spanish population. Also, in the context of its action to prevent radicalisation, the City Council supports 25 cultural associations, engages in awareness raising activities in schools regarding the reception and social integration of young migrants, organises and facilitates migrant children and young migrants' access to cultural and sport activities as well as local festivities.

The Community of Madrid has eight Centres of Participation and Integration (CEPIs), which is a unique case in Spain. These are meeting places for both

foreigners, including migrants in an irregular situation and Spanish people, where they have access to Spanish language courses, training to obtain Spanish citizenship, various cultural programmes and sport activities, psychosocial orientation, legal advice and assistance in seeking employment. They are state-sponsored centres managed by not-for-profit organisations.[61] We visited the CEPI of Chamartín and we were very positively impressed by the commitment of the staff of this centre towards ensuring social cohesion, equal opportunities for migrants and mainstreaming gender equality perspectives in all its activities. Building on the good practices of CEPI, it would be advisable that Spanish authorities make arrangements in other regions so that all migrants have access to equal social inclusion opportunities.

## 10. CONCLUSIONS AND RECOMMENDATIONS

Spain is a prime example of continued migratory pressures on European frontline states. In its attempts to curb unauthorised influxes Spain has enacted a range of policies and measures to restrict access to its territory, to contain arrivals to its land borders in the African continent within the autonomous cities of Melilla and Ceuta, and to return irregular migrants to their countries of origin. All these policies and measures are underpinned by a deterrent approach to irregular migration, which is often referred to as tackling the irregular migration pull-factor. Some of the policies analysed in this report have resulted in an uneven access to rights and differentiated treatment of asylum-seekers and migrants in different regions of the country, notably as regards access to international protection, reception conditions and access to social and economic rights. This is the case in particular in Melilla and Ceuta, where reception conditions and the accommodation of unaccompanied children and adults are in contrast with the standards applied in other parts of the country.

While the policy approaches described in this report have had an impact in reducing the number of arrivals, the conditions that drive mixed migration to Spain and the demands for entry are not likely to change in the near future. Therefore, it appears necessary that Spain pursues an integrated set of policies which provide for protection sensitive border-control, offers refugees adequate humanitarian protection and opportunities for social inclusion and ensures rapid returns of those without valid grounds for protection.

In order to address the challenges identified in this report, the Council of Europe can support Spanish authorities, upon their request, in the following areas:

a. improving access to international protection through offering:

- expertise on the basis of Council of Europe's human rights standards, notably Articles 2, 3 and 13 of the ECHR and Article 4 of Protocol 4 on issues related to the screening and identification of persons in need of international protection and their

- access to fair and efficient asylum procedures with a view to ensuring that every foreigner is able to submit an asylum application in Melilla and Ceuta;
- training the *Guardia Civil* and the National Police on how to ensure full respect for the principle of non-*refoulement*, access to asylum procedures and identification and referral to assistance of possible victims of trafficking in human beings;
  - training of OAR staff on the basis of Council of Europe's relevant human rights standards in respect of reducing the backlog of pending asylum applications and ensuring their timely and effective processing;
  - continued training of judges, prosecutors and lawyers on asylum-related matters building upon the existing collaboration with the Human Rights Education for Legal Professionals (HELP), with a particular focus on the rights of migrant and refugee children;
- b. ensuring adequate accommodation and living conditions for asylum-seekers and migrants in Melilla and Ceuta, in particular unaccompanied children, by means of encouraging dialogue between the Spanish authorities and the Council of Europe Development Bank to explore possible means of project financing;
- c. strengthening the protection of unaccompanied children through sharing best practices on the protection of the rights of the child in the context of age-assessment procedures, notably as regards the presumption of minority, guaranteeing the right to be heard and the right to legal assistance, as well as training competent authorities on the relevant standards of the Council of Europe;
- d. putting in place support measures for unaccompanied children to address the preparation of their transition to adulthood, including by means of sharing of good practices on facilitating their economic, social and cultural integration in the Spanish society;
- e. implementing the relevant recommendations of GRETA, notably as regards detecting and preventing trafficking in human beings among asylum-seekers and migrants in an irregular situation in the context of border control measures, in CETIs and CIEs as well as in relation to preventing trafficking in human beings for purposes of labour exploitation;
- f. carrying out adjustments of the legal framework on health care for migrants in an irregular situation through providing expertise based on the European Social Charter, in order to guarantee that migrants have access to all necessary health services without any discrimination;
- g. developing a coherent strategy and action plan regarding the integration of migrants and putting in place a coherent system of integration indicators and evaluation of integration policies as recommended by ECRI through the sharing of good practices and the provision of expertise via the Intercultural Cities Network.

# Appendix – Programme

## **Sunday, 18 March**

16:30-18:00 Meeting with NGOs Malaga

## **Monday, 19 March**

08:30-09:30 Visit of the Beni Enzar border crossing point, Melilla

Meeting with Mr Francisco Rodríguez López, Chief of the National Police

10:00-13:00 Visit of the CETI, Melilla

Meeting with Mr Gregorio Escobar Marcos, Delegate of the Government

Meeting with ACCEM

13:00-14:00 Visit of the Unaccompanied Minors Centre La Purísima, Melilla

Meeting with Mr Daniel Ventura Rizo, Counsellor for Social Welfare of the Autonomous City of Melilla

17:00-17:30 Meeting with Mr Francisco de la Torre Prados, Mayor of Malaga and Ms. Ruth Sarabia, Director General of Social Affairs, Good Governance and Transparency

## **Tuesday, 20 March**

13:00-14:00 Visit of the El Trajal border crossing point, Ceuta

Meeting with Mr. Cristobel Segura Velo, Chief of the Border and Alien Brigade of the National Police in Ceuta and Mr. José María Jiménez Gutiérrez, Lieutenant Colonel of the Guardia Civil in Ceuta

14:00-17:00 Visit of the CETI, Ceuta

17:00-18:00 Visit of the Unaccompanied Minors Centre La Esperanza, Ceuta

## **Wednesday, 21 March**

12:00-13:00 Visit of the CIE Sangonera la Verde, Murcia

Meeting with Mr Pedro José Martín Oteo, Commissioner of the National Police, Chief of Aliens and Border Brigade for the Region of Murcia and Mr Juan Iglesias Maldonado, Inspector of the National Police, CIE Director

17:15-18:00 Meeting with Mr Joan Ribó, Mayor of Valencia

18:30-19:30 Meeting with Ms. Mónica Oltra Jarque, Vice-President of the Council of the Generalitat Valenciana

**Thursday, 22 March**

- 08:30-11:00 Visit of the CAR Mislata, Valencia  
Meeting with Mr Felipe Perales Biosca, Director of the CAR
- 13:30-14:45 Luncheon meeting with Mr José Luis Pardo Cuervo, Ambassador in Special Mission for Migration Issues, Ms Victoria González-Bueno Catalán de Ocón, Director General for Spanish Citizens Abroad, Migratory and Consular Issues and Mr Luis Tarin, Senior Adviser for Council of Europe and OSCE, Ministry of Foreign Affairs and Cooperation
- 15:00-16:00 Meeting with Mr Francisco Javier Martos Mota, Executive Director of UNICEF and Ms Cristina Junquera Abaitua, Head of Advocacy & Research, UNICEF
- 16:15-17:15 Meeting with Mr Joaquín Sánchez Covisa Villa, Prosecutor of the Aliens Chamber, Mr Luis Lafón Nicuesa, Deputy Prosecutor to the Prosecutor of the Aliens Chamber and Ms Beatriz Sánchez Álvarez, Fiscal Attaché
- 17:30-18:10 Meeting with Mr Francisco M. Fernández Marugán, Defensor del Pueblo (Ombusman)
- 18:45-20:00 Visit to the Centre for Participation and Integration and Participation Madrid-Chamartin of the Community of Madrid

**Friday, 23 March**

- 09:00-10:00 Mr. Luis Aguilera Ruiz, Undersecretary of Interior, Ministry of Interior, Ms Cristina Díaz Márquez, Director General for Interior Policy and Ms Blanca Díaz Barral, Deputy Subdirector of the Asylum and Refuge Office, Ministry of Interior
- 10:00-11:30 Ms Marina del Corral Téllez, Secretary General of Immigration and Emigration, Ministry of Employment and Social Security and Ms Belén Roel de Lara, Head of Technical Cabinet
- 12:00-13:30 Mr Jose Luis Castellanos, Sub-Directorate General of Childhood, Ministry of Health, Social Services and Equality
- 14:00-15:00 Meeting with Ms Francesca Friz-Prguda, UNHCR representative, and Ms Marta García, Protection Officer, UNHCR
- 15:30-16:30 Mr Jorge Sainz, Secretary General of Universities, Ministry of Education, Culture and Sport
- 18:00-20:00 Visit of the CAR, Alcobendas  
Meeting with Ms Florentina Salvador Fernández, Director of the CAR

**Saturday, 24 March**

- 09:00-11:30 Visit of the Aluche CIE, Madrid  
Meeting with Mr Inspector Antonio Montes Rodríguez, Director of the

## CIE

[1] Regrettably, we were not able to meet with the Mayor of Madrid.

[2] Amnesty International, Red Cross, CEAR, ACCEM, Red Acoge, Karibu, ONG Rescate Internacional, Servicio Jesuita a Migrantes, Fundacion CEPAIM, Médicos del Mundo, Save the Children, Pro Vivienda, Merced Migraciones, Womens' Link International, Malaga Law Society.

[3] Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Bulgaria 13-17 November 2017SG/Inf(2018)18.

[4] See *Hirsi Jamaa and others v. Italy*, application 27765/09, 23 February 2012, paragraph 131. The Court considered that when the applicants were removed, the Italian authorities knew or should have known that, as irregular migrants, they would be exposed in Libya to treatment in breach of the Convention and that they would not be given any kind of protection in that country. See also Regulation (EU) No.1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), notably Article 20 (5) which states that "Any exchange of information under paragraph 1, which provides a third country with information that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights, shall be prohibited."

[5] The relevant provisions were introduced by an amendment to the Law on Aliens which laid down special rules for the interception and removal of migrants arriving in Ceuta and Melilla. This amendment became effective on 1 April 2015.

[6] *N.D. and N.T v. Spain*, applications nos 8675/15 and 8697/15, 3 October 2017. In this case, in respect of the applicants' complaint regarding the alleged violation of Article 3 of the ECHR, the Court considered that, in the light of the principles of the jurisprudence of the ECHR bodies and without prejudice to the situation of the risk of general ill-treatment invoked by the applicants, nothing in this file reveals any appearance of a violation by the Spanish authorities of the cited provision of the ECHR (Chamber Decision of 7 July 2015). The Court rejected this complaint as manifestly ill-founded together with the related complaint on Article 13 of the ECHR.

[7] The Grand Chamber hearing is scheduled for 26 September 2018.

[8] See in particular *Soering v. UK*, application no. 14038/88, 7 July 1989; *Cruz Varas and Others v. Sweden*, application no. 15576/89, 20 March 1991; *Vilvarajah and Others v. UK*, Application no. 13163/87; 13164/87; 13165/87; 13447/87; 13448/87, 30 October 1991; *Ahmed v. Austria*, application no. 25964/94, 17 December 1996; *Hirsi Jamaa and Others v. Italy*, application no. 27765/09 23 February 2012.

[9] Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Applications No. 8675/15 and No. 8697/15 *N.D. and N.T. v. Spain*, CommDH(2018)11.

[10] Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 to 18 July 2014, CPT/Inf(2015)19.

[11] UNHCR statement of 13 March 2015, available at <http://acnur.es/noticias/noticias-de-espana>

/2062-2015-03-13-15-41-22 .

[12] One of the issues that the Spanish authorities had identified during their interviews with asylum-seekers is that a high number of them hold false Moroccan passports which help them to enter into Spanish territory.

[13] The time limit for making decisions on inadmissibility is 72 hours. According to Article 20(1) and 21(2)(b) of the Asylum Act an application may be declared inadmissible when another country is responsible under the Dublin Regulation or when the applicant was recognised as a refugee and has the right to obtain protection in another EU member state, he/she came from a safe third country or submitted a repeated application with different personal data or no new relevant information concerning his/her personal condition or the situation in his/her country of origin, when the facts described by the applicant do not have any relation with the recognition of the refugee status or when the applicant had made inconsistent, or contradictory declarations, or declarations which contradict sufficiently reliable information about the country of origin or of habitual residence, in manner that clearly shows that the claim is ill-founded with regard to the fact of holding a founded fear about being persecuted or exposed to serious injury.

[14] In cases when the OAR finds the applications inadmissible a request for re-examination can be filed with the OAR which has an automatic suspensive effect. In case of a second decision of inadmissibility an appeal can be lodged before administrative courts, with no automatic suspensive effect. See also Communication from Spain concerning the case of A.C. and Others v. Spain (Application No. 6528/11, 22 July 2014) DH-DD(2018)285-rev,16.05.2018.

[15] The same admissibility procedure is applied to all asylum seekers who ask for international protection in airports, maritime ports and land borders.

[16] Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Applications No. 8675/15 and No. 8697/15 N.D. and N.T. v. Spain, CommDH(2018)11; paragraph 22. ECRI Report on Spain (fifth monitoring cycle) 27 February 2018, CRI(2018)2, paragraph 81.

[17] Thousands of Moroccans from the neighbouring areas of the autonomous cities of Melilla and Ceuta come into Spanish territory for the day for commerce purposes.

[18] GRETA(2018)42 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, published on 20 June 2018.

[19] The grounds of inadmissibility are the same as for application lodged at the border, see section 4.1. above.

[20] National Police officers stated that the asylum applications were usually lodged by detainees 24 hours before the day of their expulsion, despite the fact that there had been sufficient time to make their claims before that. Also, often there had been no coherence in migrants' explanations regarding the reasons why they would be seeking international protection.

[21] It was our understanding that they were hoping that the expulsion procedures would not be successful and that they would be released at the end of the maximum detention period of 60 days.

[22] Spanish Ombudsman: A study of asylum in Spain: International Protection and Reception System Resources, June 2016.

[23] Applications for asylum lodged in the Centres for the Temporary Stay of Foreigners in Melilla and Ceuta are also examined under the regular procedure.

[24] After 72 hours they are either transferred to centres for the reception of asylum-seekers or to a CIE pending their expulsion.

[25] Departments of the Ministry of Interior which are competent on issues of home and foreign affairs, justice, immigration, reception of asylum seekers and equality participate in this Commission.

[26] See also 'A study of asylum in Spain: International Protection and Reception System Resources', by the Spanish Ombudsman, June 2016.

[27] Asylum-seekers and migrants cannot leave CETIs between 11:30 pm and 7:30 am in Melilla and between 11:00 pm and 7:00 am in Ceuta.

[28] At the time of our visit, the CETI in Melilla, which had a capacity of 782 places, accommodated 794 persons. The CETI in Ceuta, which had a capacity of 515 places, accommodated 550 persons. The majority of asylum-seekers in Melilla were Syrians (259); other residents were migrants in an irregular situation from African countries (Algeria, Cameroon, Mauritania and Comoros). In Ceuta there were only 137 asylum-seekers, with the remaining population of the centre being migrants in an irregular situation coming from African countries (Guinea, Algeria and Cameroon).

[29] GRETA(2018)42 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, published on 20 June 2018.

[30] In principle asylum-seekers who have applied for asylum while in detention pending their expulsion (see section 4.2 above) should be accommodated in CARs or NGO-run reception centres once they are released from detention. Asylum-seekers who are transferred from CETIs in Melilla and Ceuta are also accommodated in these centres.

[31] Syrian and Eritrean asylum-seekers had arrived to Spain through the EU's relocation programmes

[32] Although part of the Schengen area, Spain maintains checks and border controls for people already in Ceuta and Melilla who wish to travel to the mainland pursuant to a declaration it made when acceding the Schengen Agreement.

[33] At times family members arrive separately and they are not transferred to the mainland until they are reunited in CETIs. This can take a long time also because DNA tests have to be performed to establish the family links, notably between children and parents.

[34] Articles 53 and 54 of the Law on Aliens.

[35] Article 60.1 of the Law on Aliens.

[36] For example, in November 2017 both accompanied and unaccompanied children were accommodated in the Archidona prison in Andalusia together with unrelated adults. We were also informed about a recent case in which a 14 year old girl had been detained in Andalusia in the recent months prior to our visit.

[37] See Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 13 June 2011, CPT/Inf(2013)6. Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 14 to 18 July 2014, CPT/Inf(2015)19.

[38] The CPT noted in its report CPT/Inf(2015)19 that leisure activities and Spanish language courses were offered in Aluche. It also noted that, nevertheless, more should be done to improve the range of activities on offer.

[39] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf(2017)3 March 2017. Immigration Detention, Factsheet.

[40] Ibid.

[41] When children arrived in the company of their parents they are accommodated together in CETIs. When children's parenthood ties with the accompanying adults cannot be proved on the basis of documents DNA tests are carried out. Should such ties not be proven children are transferred from CETIs to the special centres for the protection of children in Melilla and Ceuta.

[42] The Framework Protocol was issued jointly by the Ministry of Justice, the Ministry of Interior, the Ministry of Employment and Social Security, the Ministry of Health, the Social Services and Equality, the State General Prosecutor's Office and the Ministry of Foreign Affairs.

[43] The decree can be reviewed only by the Prosecutor ex-officio and on the application of a party with legitimate interest.

[44] UN CRC, CRC/C/ESP/CO/5-6, Concluding observations on the combined 5th and 6th periodic reports of Spain, 2 February 2018

[45] In Malaga we were informed by local lawyers that in numerous cases doctors had assessed the age of persons concerned exactly the same as 18 years and one day.

[46] Submissions of Fundación Raíces and Noves Vies to the V and VI implementation report to the UN Convention on Rights of the Child and their Optional Protocols Submitted by Spain <http://www.fundacionraices.org/wp-content/uploads/2018/01/Update-Alternative-Report.pdf> .

[47] While up-to-date data on the number of asylum applications by unaccompanied children is not available it should be noted that between 2011 and 2016 only 101 asylum applications were lodged by unaccompanied children. The number of children arriving to Spain in 2016 was 1674, see <https://data2.unhcr.org/ar/documents/download/55971>. See Aida country report on Spain, last updated 21/03/2018 available at <http://www.asylumineurope.org/reports/country/spain> .

[48] A resident permit is issued by the Government's Delegation or Sub-Delegation at the request of regional authorities upon an unaccompanied child's placement in child-protection centres. The administrative personnel who manage these centres keep the residence permits and hands them over to the children once they reach the age of 18 years old.

[49] See Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors and Recommendation CM/Rec(2008)4 of the Committee of Ministers to member states on strengthening the integration of children of migrants and of immigrant background.

[50] The total period of time spent in the refugee reception system is 24 months.

[51] Royal Decree 16/2012 on 'Urgent Measures to Ensure the Sustainability of the National Health System' passed on 24 April 2012.

[52] European Social Policy Network, Flash Report 2016/39, July 2016, available at [ec.europa.eu/social/BlobServlet?docId=16003&langId=en](http://ec.europa.eu/social/BlobServlet?docId=16003&langId=en)

[53] Effect of health insurance on the mortality of undocumented immigrants: The case of the 2012 Spanish health reform, Arnau Juanmarti Mestres, Guillem Lopez Casanovas, Judit Vall Castell, 30 January 2018, available at [https://editorialexpress.com/cgi-bin/conference/download.cgi?db\\_name=ESPE2018&paper\\_id=135](https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=ESPE2018&paper_id=135) .

[54] Spain brings back free health care for illegal migrants <https://www.reuters.com/article/us-spain-politics-health/spain-brings-back-free-healthcare-for-illegal-migrants-idUSKBN1JB1PY> .

[55] Committee on Economic, Social and Cultural Rights, Concluding Observations of the Sixth Period Report,

E/C.12/ESP/CO/6 25 April 2018. See also ECRI Report on Spain, fifth monitoring cycle, CRI(2018)2, 25 February 2018.

[56] Spanish National Statistics Institute, Press Release 26 April 2018, Economically Active Population Survey, First Quarter of 2018, EAPS 1q(1/16), available at [http://www.ine.es/en/daco/daco42/daco4211/epa0118\\_en.pdf](http://www.ine.es/en/daco/daco42/daco4211/epa0118_en.pdf)

[57] Data provided by Comunidad de Madrid, General Directorate of Social Services and Social Integration.

[58] GRETA(2018)42 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain, published on 20 June 2018. GRETA Recommendations include measures to address risks of trafficking in human beings in the agricultural sector, reviewing the regulatory systems concerning migrants working as home care workers and making sure that inspections take place in private households, raising awareness among the general public and migrant workers about the risks of trafficking in human beings for purposes of labour exploitation.

[59] International Centre for Migration Policy Development, Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU, January 2009, Ref. JLS/B4/2007/05, available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/pdf/general/regime\\_appendix\\_a\\_january\\_2009\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/pdf/general/regime_appendix_a_january_2009_en.pdf) .

[60] ECRI Report on Spain, fifth monitoring cycle, CRI(2018)2, 25 February 2018.

[61] Social and labour inclusion activities are financed by the European Social Fund.

## Related documents

No related documents