Detention - Spain

Overview

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Relevant EU legislation

Spain is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through the:

Asylum Law: Law 12/2009 of 30 October 2009, regulating the law of asylum and subsidiary protection | Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria

Asylum Regulation: Royal Decree 203/1995 of 10 February 1995 approving the Regulation implementing Law 5/1984 of 26 March 1984, regulating the law of asylum and criteria for refugee status, as amended by Law 9/1994 of 19 May 1994 | Real Decreto 203/1995, de 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley 5/1984, de 26 de marzo, reguladora del Derecho de Asilo y de la condición de Refugiado, modificada por la Ley 9/1994, de 19 de mayo

Asylum Reception Regulation: Royal Decree 220/2022 of 29 March which approves the Regulation governing the international protection reception system | Real Decreto 220/2022, de 29 de marzo, por el que se aprueba el Reglamento por el que se regula el sistema de acogida en materia de protección internacional

Aliens Law: Organic Law 4/2000 of 11 January 2000 on rights and liberties of aliens in Spain and their social integration | Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social

Aliens implementing Regulation: Royal Decree 1155/2024 of 19 November approving the Implementing Regulation of Organic Law 4/2000 of 11 January on the rights and liberties of aliens in Spain and their social integration | Real Decreto 1155/2024, de 19 de noviembre, por el que se aprueba el Reglamento de

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la Ley Orgánica, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social.

Detention Centres Regulation: Royal Decree 162/2014 of 14 March 2014 on the regulation and functioning of internal rules of the foreigners detention centers | Real Decreto 162/2014, de 14 de marzo, por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros

Protocol for Unaccompanied Minors: Resolution of 13 October 2014 on the Framework Protocol on Actions Relating to Foreign Unaccompanied Minors | Resolución de 13 de octubre de 2014, de la Subsecretaría, por la que se publica el Acuerdo para la aprobación del Protocolo Marco sobre determinadas actuaciones en relación con los Menores Extranjeros No Acompañados

National legislation

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Competent authority and stakeholders

Area	National authority / stakeholder	Assistance to competent authority
Detention decision	Competent judge	Not applicable
Administration and management of detention facilities	General Directorate of Police (Ministry of the Interior)	Not applicable
Information provision in detention	Staff working at the facilities and NGOs with access to the facilities.	Not applicable
Interpretation services in detention	General Directorate of Police (Ministry of the Interior)	Not applicable

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Area	National authority / stakeholder	Assistance to competent authority
Access to the procedure and provision of asylum information in detention	Access to the procedure: General Directorate of Police (Ministry of the Interior) Information is provided by staff working at the facilities and NGOs with access to the facilities.	Not applicable
Detention for the Dublin procedure	General Directorate of Police (Ministry of the Interior)	Not applicable
Processing of asylum applications of applicants who are in detention	General Directorate of Police (Ministry of the Interior)	Not applicable
Legal assistance and representation in detention	NGOs and bar associations with an agreement.	Not applicable
Review of detention	Courts of First Instance (section competent for judicial investigation) | Tribunales de Instancia (sección instrucción)	Not applicable

Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

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In general, applicants for international protection are not detained. However, a person can apply for international protection while in detention in a foreigners' internment centre (*centros de internamiento de extranjeros* or CIE, by its acronym) or a penitentiary structure. The applicant remains in detention pending an admissibility decision on the case. If admissible and detained in aforeigners' interment centre, he/she will be released.

Detention in the context of identification or verification of identity is not foreseen in Spanish legislation.

Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

In general, applicants for international protection are not detained. However, a person can apply for international protection while in detention in a foreigners' internment centre or a penitentiary structure. The applicant will remain in detention pending on an admissibility decision on his/her case. If admissible and detained in a detention centre for foreigners, he/she will be released.

Detention due to a risk of absconding and to determine elements on which the application for international protection is based is not foreseen in Spanish legislation.

Detention in the context of a procedure to decide on the applicant's right to enter the territory

This ground is only foreseen at the border. A person who applies for asylum at the border or in an airport must remain in spaces with restricted freedom of movement (*salas de inadmision de fronteras*) until their application is declared admissible, inadmissible or is rejected. This detention will last 4 working days, and it can be extended up to 10 days in some cases. If this time elapses, he/she should be admitted onto the territory (article 21 (1) and (5) of the Asylum Law).

In addition, Article 22 of the Asylum Law allows for the extension of stays in border inadmissibility rooms (*salas de inadmisión de fronteras*) during the processing of appeals for reconsideration and during the processing of requests for the precautionary suspension of the enforceability of a decision of inadmissibility or refusal at the border. Therefore, the length of stay may exceed 10 days.

Detention in the context of a return procedure

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The legal framework for administrative detention of third-country nationals is set out in the Aliens Act. The grounds are not meant to apply to applicants for international protection.

1. For the purposes of an expulsion from the country, as a precautionary measure, preventive detention (for a maximum period of 72 hours) and internment may be ordered, subject to judicial authorisation, in foreigners' internment centres and during the processing of the disciplinary proceedings. Detention (Internment) shall be maintained for the time necessary for the purposes of the proceedings, with a maximum duration of 60 days, and no new detention may be ordered for any of the reasons provided for in the same proceedings.

   When a notification for an expulsion has been issued and the non-national fails to depart from the country within the prescribed time limit (Article 64 (1) Aliens Act). If the expulsion cannot be carried out within 72 hours, the internment measure may be requested, which may not exceed the period of 60 days.

Detention in the context of national security and public order

In general, applicants for international protection are not detained. However, a person can apply for international protection while in detention in a foreigners' centre or a penitentiary structure. The applicant remains in detention pending an admissibility decision on the case. If admissible and detained in a detention centre for foreigners, he/she will be released.

The detention of applicants for international protection in the context of national security and public order is not foreseen in Spanish legislation. However, activities contrary to national security or public order considered very serious under the Organic Law 1/1992, of 21 February, on the Protection of Public Safety constitute a very serious offence (Art. 54 (1) letter a of the Aliens Act) for which expulsion may be applied.

Detention for the purpose of a Dublin transfer

Detention for the purpose of a Dublin transfer is not foreseen in Spanish current legislation.

Less coercive measures (alternatives to detention)

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There are no provisions under Spanish law for alternatives to detention for applicants for international protection. However, the Aliens Act includes some cautionary alternative measures that can be taken for foreigners who are subject to a return. The measures include:

1. Periodically presented themselves to the competent authority;
2. Compulsory residence in a particular place;
3. Obligation to surrender the passport, travel or identity document;
4. Precautionary arrest, requested by the administrative authority or its agents, for a maximum period of 72 hours prior to the request for detention;
5. Preventive detention before a judicial authorisation for a foreigners' internment centre;
6. Any other injunction that the judge considers appropriate and sufficient.

The alternative to detention applied stays in place until:

- the person meets the conditions for entry or stay in Spain;
- a decision on the removal is issued;
- the procedure has ended otherwise.

In practice, alternatives to detention are applied on a case-by-case basis and depending on the evolution of the individual's case.

Application for international protection and processing while in detention/impact on the asylum procedure

If a detained third-country national wants to apply for international protection, the competent authority will ensure the immediate registration and lodging of the application. The court may decide on the release of the applicant depending on the individual circumstances. New applications in detention are automatically channelled through the border procedure, in accordance to Article 25 (2) of the Asylum Law.

Foreigners' internment centres are public establishments of a non-penitentiary nature; admission and stay in them shall be solely for preventive and precautionary purposes, safeguarding the rights and freedoms recognised in the legal system, with no limitations other than those established on their freedom of movement, in accordance with the content and purpose of the judicial admission measure agreed upon. Therefore, applicants in detention will be entitled to free

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legal assistance and an interpreter, just like any other applicant.

Third-country nationals who do not meet necessary requirements to enter Spanish territory can also apply for international protection from a border post. In these cases, applicants must remain in the designated areas at border posts (*Salas de Inadmisión de fronteras*) until their application is accepted or rejected.

The Asylum Law provides under article 21 the legal framework for the border procedure. When third-country nationals present in border posts and CIE apply for international protection, the Minister of the Interior may refuse to process these applications if they meet certain inadmissibility criteria outlined in Article 20 of the same Law. At the same time, the Minister of the Interior can reject the application by reasoned decision on the grounds set out in Article 21 (2). In any case, the decision must be notified to the applicant within four days from the lodging. The time limit for the notification of a rejection may be extended by decision of the Minister of the Interior to ten days if the UNHCR requests it in certain circumstances.

The applicant may lodge a request for re-examination of the inadmissibility or rejection decision within two days of receiving the notification. This request temporarily suspends the effects of the decision. The Minister of the Interior must notify the decision on the request within two days. If no decision is made within the prescribed periods (either for inadmissibility, rejection, or re-examination), the application will be processed via the ordinary procedure. Applicants at border posts will be granted entry, and applicants at CIEs will be released. In both cases, provisional stay will be granted until the final decision is made.

Applicants in the border procedure and CIE receive a document certifying their status as an applicant for IP only if their application is declared admissible.

When in detention, information on international protection is provided by staff from detention facilities and NGOs through brochures which are available in different languages. Applicants in detention have the right to the assistance of a lawyer. They can request a court-appointed lawyer (free of charge), go to a specialised NGO that provides free legal advice or hire a private lawyer.

The provision of legal assistance in foreign detention centers (Centros de Internamiento de Extranjeros | Foreign Internment Centers) is regulated on Royal Decree 162/2014 and include: Articles 6 and 8 provides that each detention center will have facilities for social, legal and cultural assistance (see also Article 60 (2) of the Organic Law 4/2000 on the rights and freedoms of foreigners in

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Spain and their social integration (LOEX)), and Articles 58 and 59 under Title VII regulating the participation of civil society organisations in providing assistance to foreigners held in detention centers and the visits of these organisations.

Submission of subsequent applications while in detention: the Asylum Law does not include a specific procedure for subsequent applications and it does not set a limit in the number of applications a person can submit. It is only considered a subsequent application if the previous one was made in Spain. In general, subsequent applications are not admitted if they don´t contain any new elements of substance or related to inadmissibility grounds previously applied.

Applicants present at a CIE or border post receive notification of the decision to admit their application for processing. This document, which is delivered by the police personnel, informs them of the deadline for obtaining documentation, as well as the specific location where they must go to do so. Resolutions must be signed by the applicant, stamped and dated by the police, and a copy must be provided to them. The original must be sent by regular post to the DGProInt, to be included in their file. Once they are released from the CIE or allowed to enter the territory, the responsibility for obtaining documentation falls on the applicant.

No exception to the border procedure for applicants in detention is applied. All applications lodged at CIEs should be processed as applications lodged at the border (Art. 25 (2) of the Asylum Law).

In accordance with Article 62 (6) of the Aliens Act, the judge with jurisdiction to authorize and, where appropriate, revoke detention shall be the investigating judge of the place where the arrest is made.

Procedural safeguards

Access to information and interpretation

When third-country nationals are in detention, it is a precautionary measure initiated when disciplinary proceedings for expulsion from the territory are initiated. This detention is imposed for a maximum period of 60 days. Third-country nationals in detention are informed about the reasons for their detention and the procedures for challenging the detention order through the judge's official order.

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The information regarding the reasons for detention and the procedures for challenging the detention order is provided to detained individuals at the time of their admission to the detention center. The center staff are responsible for delivering this information.

Applicants detained in the facility are informed about the rules governing the detention center and their rights and obligations through an informational leaflet.

Interpretation is provided by a private company which is contracted by the national police.

Legal assistance and representation

Article 22 of the Foreigners Act states that *"foreigners in Spain have the right to legal assistance in administrative procedures that may result to their refusal of entry, return or expulsion from Spanish territory and in all procedures relating to international protection. This assistance shall be free of charge when they lack sufficient economic resources according to the criteria established in the regulations governing the right to free legal assistance."*

Article 62(bis)(1)(e) and Article 62(bis)(1)(f) of the Foreigners Act provide that, when a third-country national is placed in detention, their lawyer must be informed immediately. Detained third-country nationals have the right to legal assistance, including the appointment of a lawyer ex officio where necessary, and the right to communicate with their lawyer in private, even outside the center's opening hours in urgent cases.

Third-country nationals may request free legal assistance or hire a lawyer at their own expense in the procedures involving prohibition of entry in Spain, refusal of entry at the border and return (Article 26(2) LOEX); return procedures (Article 58 LOEX); accelerated expulsion procedure pursuant to Article 63(3) LOEX; ordinary expulsion procedure (Article 63), and enforcement of an expulsion decision (Article 64 LOEX).

The specifics regarding the right to free legal assistance including the requirements, procedure to request it, and the scope of the right are regulated by the Free Legal Aid Act.

The provision of legal assistance in detention centers (CIEs) is outlined in the CIE Regulation (approved by the Royal Decree 162/2014 of March 14th):

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- Articles 6 and 8 establish that each CIE must have facilities for social, legal and cultural assistance (see also Article 60(2) of the Foreigners Act).
- Article 16(2)(g), 16(2)(h), and 16(2)(m) guarantee the conditions to communicate with the lawyer, including outside visiting hours in urgent cases; while Article 15(4) ensures the confidentiality of such communication,
- Articles 31, 41 and 42 elaborate on the right of the detained third-country national to communicate with his/her lawyer;
- Articles 58 and 59, under Title VII of the CIE Regulation, lay down the framework for the participation of civil society organisations in providing assistance to foreigners held in detention centers and the conditions for their visits.

Article 15(4) of the CIE Regulation requires the authorities to sign collaboration agreements with the relevant Bar Associations in order to establish the operating conditions of the legal assistance service to detained foreigners who request it.

Length of detention

The maximum detention period is 60 days, after which the third-country national must be released. Prior to detention, an illegally staying third-country national can be kept under arrest in a police station for a maximum period of 72 hours.

Third-country nationals who apply for asylum in the detention centre will remain in detention during the admissibility phase of the application, which lasts 4 working days. Border procedure will be applied, thus, if the application is admitted, the person will continue their asylum claim outside of the detention centre.

Third-country nationals who apply for asylum at the border can be detained at the border for a maximum of 4 working days (admissibility phase), which can be extended up to 10 days in some cases.

Judicial review of detention

A third-country national can lodge a judicial appeal against a detention decision (court order) under the Criminal Procedure Act. The detention order may be appealed before a higher court (the Provincial Court/*Audiencia Provincial*). The deadlines for lodging an appeal and for a decision are very short (less than a

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week for lodging and less than 15 days for issuing a decision).

Detention measures can be challenged before the Section competent for judicial investigation (*instrucción*) of First- instance Courts (*Tribunales de Instancia*). This judicial body substitutes, in name, Judicial Investigation Courts (*Juzgados de Instrucción)* due to Organic Law 1/2025. Third-country nationals in detention should remain available for the judge or the court that authorised or ordered the detention. The judge for the control of the stay in a CIE (Juez de control de estancia) decides, without a possibility of a further appeal, on all petitions and complaints raised by detainees as they affect their fundamental rights and will visit the centres when serious breaches are acknowledged.

Specific conditions relating to detention

Conditions of detention

The following conditions apply:

- **Access to open-air space**: At least 4 hours per day.
- **Visitors/access to external communications – including the role of UNHCR, access to facilities of UNHCR and legal counsellors**: Detainees have the right to receive unlimited visits during visiting hours. Anyone can visit a detainee as per his/her request, unless there are some security reasons to deny it. Lawyers can also visit outside of visiting hours in urgent cases. External communication is possible by phone. They can use public phones and their private mobile phone during leisure hours. Meetings are held in a single room where several detainees can be visited. They are separate from the visitors by a glass panel in front and lateral panels. The room is under video surveillance.
- **Access to legal assistance:** It is provided free of charge by lawyers from the bar associations.
- **Privacy and confidentiality:** When applicants enter a CIEs, they have the right to make a free phone call to their lawyer. Article 16 and 41 of Royal Decree 162/2014 grants them the right to communicate with their lawyer in private during their stay in the CIE. There are public phones in the common areas of the CIEs.

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Personal interviews with lawyers will be private as well, unless a court orders otherwise (Article 16 of Organic Law 5/2024, of 11th November, on the Right to Defense and Royal Decree 162/2014). To ensure confidentiality, the CIEs have a lawyer´s booth and visiting rooms. There is surveillance, but it is purely visual.

- **Access to education (school for minors, language courses, etc.):** The maximum detention time (60 days) doesn't allow for long-term activities. Social assistance is provided.
- **Opportunity to leave the detention facility:** Yes, for medical assistance or treatment, when not available at the detention centre. Movements are restricted, depending on the time. At the same time, a detainee has the obligation to remain in the centre to be available for the judicial body that authorised or ordered the detention.
- **Freedom of movement within the detention centre:** Detainees can move around the centre.
- **Language support (translation and interpretation services):** Interpretation is provided by a private company which is contracted by the national police.
- **Recreational activities, leisure time:** There must be adequate facilities for leisure, entertainment and sports activities, as well as a courtyard for detainees to walk in.
- **Medical care, psychological assistance:** Detainees are entitled to adequate medical care while in detention, including psychological support. A detainee should have a medical examination upon entry and exit from the centre, and when ordered by the director of the facility for collective health reasons.

Detention of applicants with special needs

Legislative overview

The detention of unaccompanied minors is explicitly prohibited (Article 62.4 of the Aliens Act). Unaccompanied minors cannot be detained while awaiting a return; they are under the protection of public entities in charge of minors as established by the Organic Law of Legal Protection of Minors.

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The repatriation of the unaccompanied minor is never considered a sanction measure, and it is based in the best interests of the child.

For an age assessment, the Agreement for the approval of the Framework Protocol on certain actions in relation to unaccompanied foreign minors states that the order to carry out medical tests shall be issued by the Public Prosecutor's Office as soon as possible. Where possible, it shall be issued during the duty hours of the Public Prosecutor on duty. If, for exceptional reasons, the necessary tests cannot be carried out during the duty hours, the Public Prosecutor shall place the minor at the disposal of the competent public child protection agency so that he or she may be admitted to a child protection centre until the tests can be carried out.

Families: following the Supreme Court ruling of 10 February 2015 rejecting the separation of families, as there are no facilities for families in the CIEs, families are not detained.

Detention of applicants with special needs: article 62(1) of the Asylum Law foresees that the judge, after hearing the interested party and the public prosecutor, shall rule on the proposal for the third-country national’s admission by means of a reasoned order and, in the event of serious illness of the third-country national, shall assess the risk of detention to public health or the health of the third-country national himself.

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