Seeking Refuge in Spain: Transiting the Asylum System and Falling into Irregularity

Gracia Moreno-Amador[1]

From the mid-1990s and into the first decade of the 2000s, Spain was processing about 5,500 asylum applications a year. However, with the sudden rise in the arrival of refugees in Europe in 2015 this figure steadily increased from 14,887 in 2015, to 31,740 in 2017 and then to 118,446 in 2019. Despite Covid-19 and its impact on mobility, Spain has continued to receive high numbers of applications – 88,826 in 2020 and 65,482 in 2021. Most asylum seekers come from Latin America, notably Colombia, El Salvador, Honduras, Nicaragua and Venezuela; North Africa, notably Algeria, Mali and Morocco, or from Palestine, Syria and Ukraine (Ministry of the Interior 2015–21). In the last three years Spain has moved from receiving the fewest number of asylum applications among the European countries to being top of the list along with Germany and France (Eurostat 2021).

Although refugees in Spain can access and examine their asylum records, this fails to translate into actually extending their protection. Refugee status offers the highest level of protection. Unlike other forms of protection, such as those granted on humanitarian grounds or on a temporary basis, the holders of refugee status are guaranteed permanent residence, as well as the right to work and to unimpeded mobility. The main differences are related to the recognition, durability and revocability of a person's rights. Protection granted on humanitarian grounds is temporary, usually for a year but extendable if necessary. In other words, these rights are fragile, precarious

1. Thanks to Soufian Marouan; Maha Marouan, Pennsylvania State University; and the IRiS Anthology Editorial Team for their generous contributions during the editing process.

and temporary. Despite the existence of various protective categories, at least 74 per cent of applicants moving through the asylum system fall into an irregular administrative category (Ministry of the Interior 1995–21).

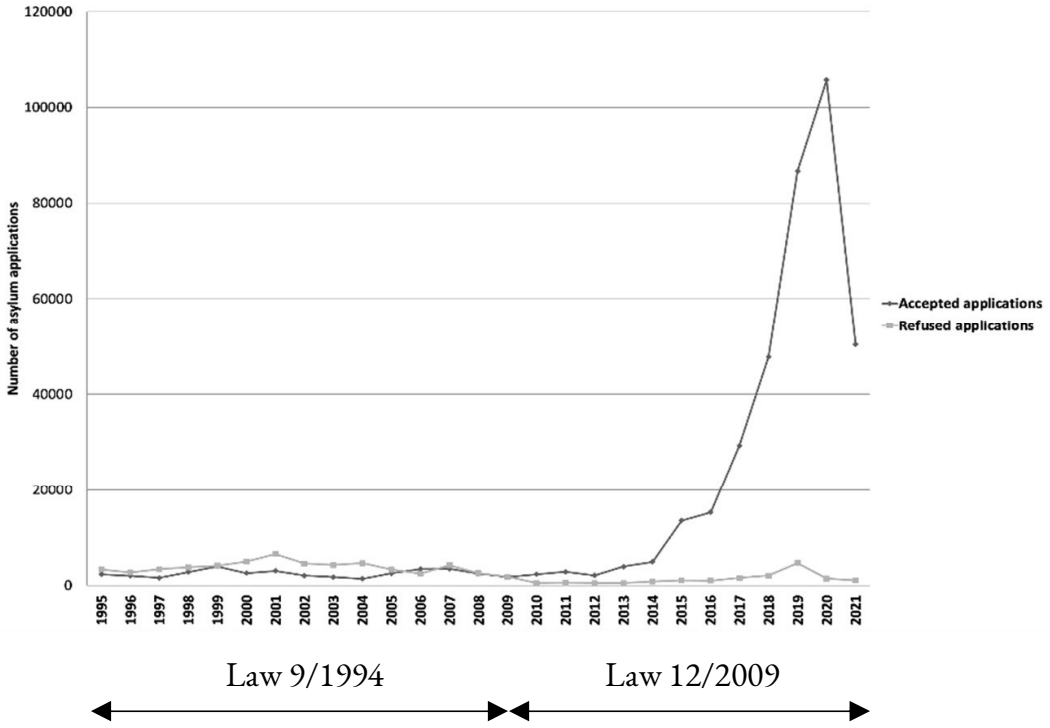
The increase in asylum applications has been the most notable change, along with the attendant adjustments to the Spanish asylum system, which include expanding the state reception system. However, once the applications have been examined, the share of asylum decisions that grant refugee status has remained low for almost thirty years. Although this has created a funnelling effect, it has not fundamentally altered the nature of the asylum system. My aim here is to cast light on the selection process and how this effects the Spanish asylum system in terms of both asylum policies and their impact on asylum seekers in Spain.

Widening access to and identification of 'asylum seekers'

As mentioned above, the shift in the Spanish asylum system from 2015 onwards coincided with the so-called 'refugee crisis', namely the large-scale arrival of refugees in Europe. While Spain was less popular as a destination country than places like Greece and Italy, the European migration agenda and the attempt to provide a joint political response through the now infamous quota system clearly shaped its migration agenda. At the same time, Spain introduced a series of administrative changes, including the response of regional and local administrations, as well as mobilizations and campaigns by civil society who wanted to welcome refugees and push for a change in the national policy response to the new migration challenges. These changes were framed by the regulation of the asylum law (Law 12/2009), as opposed to the previous asylum law (Law 9/1994), that had incorporated an 'inadmissibility procedure'. This procedure established an asylum screening stage before asylum seekers could be recognized as such and thus be able to apply for asylum (Garcés-Mascareñas and Moreno-Amador 2022). The previous asylum law (Law 9/1994), the inadmissibility procedure was applied to individuals seeking asylum both in 'the territory' and 'at the border'. However, with the 2009 change in the asylum law, the inadmissibility procedure was only maintained at the border. This means that the Spanish authorities could now consider the asylum applications of people who had crossed the borders and were applying within Spanish territory (López-Sala and Moreno-Amador 2020).

Between 1995, when the asylum law came into force, and 2009, when it was revised, around 60 per cent of applications were deemed inadmissible, as shown in Figure 1 (Ministry of the Interior 1995–2009). Some of the main reasons for inadmissibility were that the application contained no grounds for refugee status; that the facts, data or allegations were implausible or currently invalid; or that the applicant had been recognized as a refugee in a third state or came from a third state that could have provided the requisite protection. The high likelihood of being deemed inadmissible and, subsequently, the high percentage of rejection rates, possibly deterred future applicants. As a result, refugees may have declined to consider asylum as a right. Nevertheless, asylum policies cannot be understood separately from broader migration policies. Although Spain did not see itself as a country of asylum, it was recognized as a country of immigration (Garcés-Mascareñas 2019). The numbers of migrants in Spain far exceed those of asylum seekers. This is because there had been a strong demand for foreign labour, especially in the 2000s when around four million migrants arrived in the country. Consequently, the law on foreigners was geared towards opening up alternative channels of entry and of acquiring residential status.

Figure 1: Evolution of asylum applicants, 1995–2021

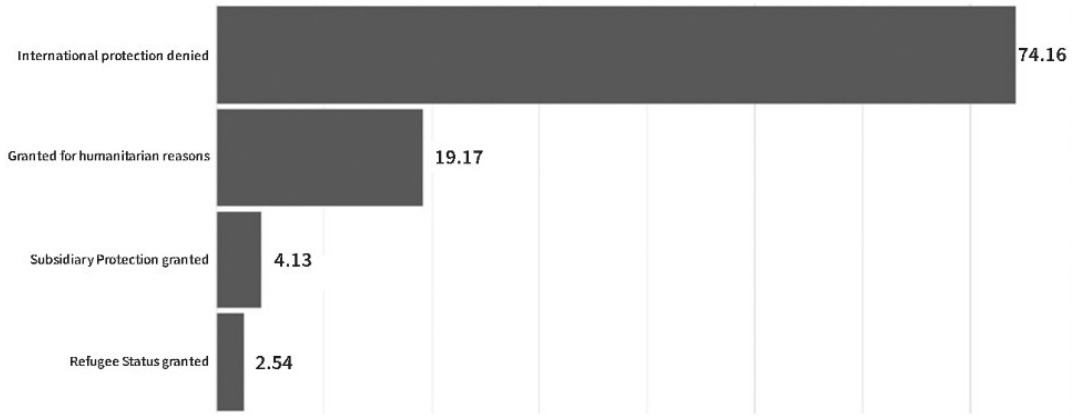


Source: Own elaboration based on data from the Ministry of the Interior (1995–2021).

Transit through the asylum system and subsequent denial of refugee status

Identification under the ambiguous legal category of 'asylum seeker' or, to put it differently, the status of waiting to be recognized as a refugee, has guaranteed the principle of non-refoulement, which is a cornerstone of the 1951 Geneva Convention. Apart from the partial recognition of some fundamental rights, rejections of asylum cases have remained high in recent years, as is evident from the following graph (Figure 2). Between 1995 and 2021, only about 2.5 per cent of the applicants were granted refugee status, around 4 per cent were accorded subsidiary protection status and 19 per cent have been given the right to remain for humanitarian reasons (Ministry of the Interior 1995–2021). In summary, despite access to the initial procedure, the vast majority of applicants eventually failed to obtain the protection they sought in the final phase.

Figure 2: Decisions on asylum applications (in percentage), 1995–2021



Source: Own elaboration based on data from the Ministry of the Interior (1995–2021).

The reduction in the number of individuals granted international protection – refugee status and subsidiary protection – has persisted over time. Alongside this, however, other subcategories of protection have gained recognition, including protection on humanitarian grounds, which applies mainly to Venezuelans, and more recently in 2022, temporary protection in the case of Ukrainians. First, this has resulted in the fragmentation of the refugee category into other fragile, precarious and temporary legal categories. Second, it has showed how asylum management produced selection,

discrimination and recognition (or not) depending on the country of origin, which responds, to a greater extent, to the interests of the destination country rather than to the reasons why some people are being forced to flee their countries of origin. Moreover, these protection statuses have been conditioned by revocability or subject to a cancellable period. Thus, applicants who obtain this type of protection are also sooner or later liable to find themselves in an irregular administrative situation.

Also, people who pass through the asylum system and whose asylum decisions are rejected become migrants in an irregular administrative situation based on the law of aliens (Law 4/2000). They are transferred from the asylum system to the alien system. In other words, these former asylum seekers become 'rejected' refugees and thus 'illegal'. This means losing their residence rights, along with any work permit they might have had and the termination of their labour contract. It also carries an increased risk of detention and the possibility of deportation in the event of police checks on the streets.

The paradoxes of the asylum system and its effects

Refugee status in Spain has become an exception 'for the chosen few'. Although this is also happening in European countries other than Spain, it is based on the premise that a right to asylum is best defended when access to it is restricted (Fassin and Kobelinsky 2012). This has several implications.

First, under the 1951 Geneva Convention the concept of refugee status retains its validity and legitimacy. The institution of asylum is represented as a safeguard and guarantor of the right to refuge, and democratic Western countries regard themselves as standard-bearers in the fight for human rights. Paradoxically, most people are excluded from such protection and treated as illegitimate and undeserving. The ongoing separation between those who do and do not deserve institutional recognition is at the heart of the asylum system, which selects, divides, hierarchizes, excludes or includes refugees in a differential manner.

Second, the combination of inclusionary and exclusionary practices cast light on the inconsistent nature of the asylum policies. Firstly, the claimants are frequently granted partial and temporary rights and access to the social services and assistance. Subsequently, when their applications fail, aspirant

asylum seekers suddenly find themselves in a precarious position and vulnerable to deportation, or at least until they manage to regularize their status in Spain. It should be noted that these people often have to wait for an inordinately long time before a final decision on their asylum application is made. These lengthening waiting periods produce enough 'computational' time in which to lay the groundwork for legal stability or subsequent potential regularization. The 'waiting time' in the asylum procedure is thus turned into a preliminary step towards obtaining legal status, rather than what the asylum system should have guaranteed from the outset – the fulfilment of the right to asylum, protection and safety.

Finally, a rejection of their applications by the state authorities implies not only non-recognition of their rights but also the negation of their personal stories and lived experiences. This type of institutional violence, whether direct or indirect, sometimes leads to the revictimization of those who have been through the asylum system and gone on to tell their life stories. In effect, the system itself projects and reproduces a false representation – one that stigmatizes and depoliticizes the actions, struggles and resistance of exiled political subjects who have fled from persecution and violence in their countries of origin.

References

Eurostat (2021) 'Asylum and first-time asylum applicants by citizenship, age and sex, annual aggregated data (rounded)', available at: https://ec.europa.eu/eurostat/web/products-datasets/-/tps00191.

Fassin, D. and C. Kobelinsky (2012) 'How asylum claims are adjudicated: the institution as a moral agent', *Revue française de sociologie*, 4 (4): 444–72.

Garcés-Mascareñas, B. (2019) 'To be or not to be: deficiencies in the Spanish reception system', *Notes Internacionals*, *CIDOB*, 214: 1–5.

Garcés-Mascareñas, B. and G. Moreno-Amador (2022) 'Multilevel policymaking of refugee reception policies in Spain', in *The multilevel governance of refugee reception policies in Europe*, Routledge.

López-Sala, A. and G. Moreno-Amador (2020) 'Seeking protection at the gates of Europe: refugees, labeling and dissuasion practices at the southern Spanish borders', *Estudios Fronterizos*, 21: 1–20.

Ministry of the Interior (various dates) 'Statistics', ministry website: available at: https://www.interior.gob.es/opencms/en/archivos-y-documentacion/.