

E-ISSN 2014-0843
D.L.: B-8436-2012

opinión

463

FEBRUARY
2017

THE ASYLUM SYSTEM IN SPAIN: Guaranteed right to protection?

Blanca Garcés Mascareñas, Senior Research Fellow

Hundreds of thousands of demonstrators filled central Barcelona on February 18th to demand that European governments fulfil their obligations. They demanded compliance with the relocation quotas from Greece and Italy. But they called for more, insisting that the right to asylum must be guaranteed with safe means of entry, that asylum procedures should be fair and consistent with international law and that reception conditions should be dignified. Thus far, the Spanish government has relocated just 900 of the nearly 16,000 asylum seekers agreed in September 2015. That is a long way from where it should be. We know little about the Spanish asylum system, what awaits those who attempt to arrive by themselves and those who are already here. Is the right to international protection guaranteed?

To seek asylum in Spain, first you have to reach it. Relatively few manage to through the state programmes of resettlement (from outside Europe) and relocation (from Greece and Italy). The problem is that arriving without assistance is not easy. The cheapest, simplest way is by plane. But that option is only available to citizens of countries without visa requirements. It is not for Syrians, Ukrainians, Algerians, Moroccans, Iraqis or sub-Saharanans, among many others. For them, the only possibility is to cross the border irregularly. For those coming from the south, this means scaling the fences of Ceuta or Melilla, or taking to the sea. Is this guaranteeing the right to international protection?

In March 2015 two asylum offices were opened on the borders of Ceuta and Melilla. According to the government, these offices were meant to guarantee the right to asylum without the need to cross the border irregularly and thereby risking one's life. Nevertheless, to reach these offices the Moroccan police controls have to be passed, which is where the filter is applied: we know that they let Syrians through, but not sub-Saharanans. According to Jorge Fernández Díaz, then Interior Minister, those not presenting themselves at the asylum offices and crossing the border irregularly would not be considered refugees and therefore could be returned without applying the personalised legal procedures required by the Foreigners' Law and international legislation. That was the justification for the "pushbacks" (*devoluciones en caliente*), which were by no coincidence legalised in parallel to the asylum offices being opened at the border.

The second entry filter is applied once asylum seekers reach Ceuta and Melilla. Although the Law on Asylum explicitly recognises freedom of movement, it

doesn't work like that for the asylum seekers in Ceuta and Melilla: they cannot freely reach the peninsula until the state agrees. For a long time, this decision has been linked to the resolution of their asylum application. In other words: while their application was being processed, they could not move on, meaning that they remained immobilised for months and even years. The situation is not so different from that recently seen on certain Greek islands. All this despite various legal rulings reminding that asylum seekers are in a regular administrative situation, and should therefore enjoy freedom of movement; and that the exit border controls in Ceuta and Melilla should not be used to limit freedom of movement.

Regardless of where the request is made, the asylum application is the start of a long and uncertain wait. It is calculated that asylum decisions can take between 18 months and two years and in some cases as long as three years. This depends on how saturated the Asylum and Refugee Office is, but also on the applicant's nationality. We know that applications by citizens of Mali, Ukraine and the Occupied Palestinian Territories find themselves paralysed while waiting for the situation in their countries of origin to improve. It is worth recalling that many Palestinians come from Syria, where they were already living in exile when the conflict began. After years of waiting, the decision finally arrives. In 2015, 70% of asylum applications ended in refusal. That means that most asylum seekers end up without papers. After years being asked to demonstrate their vulnerability in their places of origin, their only chance will be to demonstrate their integration in Spain (with three years of residence and a work contract) in view to their regularisation through the so-called *arraigo social*.

And in the meantime, what reception do we give them? In the first six-month phase a place is facilitated in a public centre or one managed by a non-governmental organisation subsidised by the administration. These centres are distributed around the country and asylum seekers must go where there is a place available. In the second phase – of between six and eleven months – organisations provide assistance for the rent as well as basic needs. Although legal and psychological support continues to be provided, as well as employment guidance and language courses, it is considered that in this phase the person should be to a large extent autonomous. And therein lies part of the problem. While the first phase is overly inflexible for those who already have networks in the country (to the point that they have to go and live in another place), the second is extremely limited (in assistance and time) for those who have just arrived and have nothing. Not only because adapting to a new life is always difficult but because doing so in a country with such a difficult access to housing and work is nearly impossible.

Many, therefore, end up left "on their own". This includes those who did not want to go to the centre assigned in the first six months and are therefore left out of the state reception programme; those who find neither work nor housing and, in the absence of family networks, cannot survive with the economic assistance of the second phase; those who "should" but are not "autonomous" after the 18 or 24 months foreseen by the state reception system. It is precisely here that non-governmental organisations are working alongside local and autonomous administrations. Their complementary reception programmes seek to give a response to the situation of those asylum seekers left out of the state system. Their work is therefore fundamental. Fundamental so these people aren't left alone, fundamental to remind that they are welcome, and fundamental to question from below what is a particularly rigid and centralised system that needs all the administrations, and especially those closest at hand, in order to be able to work.