

CEA(R)

Spanish Commission
for Refugees

Epim

European Programme
for Integration
and Migration

ACCESS TO PROTECTION: A HUMAN RIGHT

CONTEXT

Access to Spanish and European territory is the first essential step in guaranteeing protection for refugees and respect for their fundamental human rights. Migration policies must guarantee compliance with international and European law on the protection and access of these persons.

The historic judgment of the European Court of Human Rights (ECHR) in the case of *Hirsi v. Italy*, of February 2012, not only condemns Italy for having returned migrants intercepted at sea in 2009 to Libya, but also strengthens the principles of border control and surveillance with which States must comply:

The principle of non-refoulement of a person to a country where his or her life would be in danger and/or where he or she may be subjected to torture or inhuman or degrading treatment or punishment.

The obligation of States to identify migrants and refugees on an individual basis and to assess the treatment to which they would be subjected in the country to which they shall be returned.

The prohibition on collective expulsions, including at sea.

Compliance with procedural guarantees: legal assistance and the assistance of an interpreter, the right to information and access to effective remedies against return.

WHAT IS HAPPENING AT SPANISH BORDERS?

Collective expulsions

There have been collective expulsions of immigrants who have reached Spanish territory. These expulsions are expressly prohibited by Art. 4 of Protocol 4 of the European Convention on Human Rights (ECHR,) as determined by ECHR case law in the case of *Hirsi Jamaa*.

Collective expulsions at our borders are a violation of Spanish, European and international law, as the situation of each immigrant is not studied on an individual basis, they are not given legal assistance or the assistance of an interpreter, the administrative procedures provided for in the immigration laws are not initiated and they are not given access to international protection procedures. Instead, they are expelled directly to Morocco.

Principle of non-refoulement

The expulsion of these persons to Morocco, a country that does not respect human rights, without providing them with access to international protection procedures, violates the principle of non-refoulement included in Article 33 of the Geneva Convention of 1951, to which Spain is a signatory.

Bilateral agreements

In these cases, Spanish authorities often invoke the application of Bilateral Readmission Agreements. However, the *Hirsi Jamaa* case reminds us that Member States “cannot evade their own responsibility by invoking their obligations under bilateral agreements [...]”, as they are obliged not to return any person to a third country, even a signatory to a Readmission Agreement, where he or she may be subjected to torture or inhuman or degrading treatment.

Spain has signed Bilateral Readmission Agreements for migrants and cooperation in the management of migration flows with Algeria, Ghana, Guinea-Bissau, Morocco, Mauritania, Niger, Nigeria, Cape Verde, Gambia and Guinea.

Arrivals by boat	2011	2012	2013
	5,443	3,804	3,237
Arrivals to Ceuta and Melilla	2011	2012	2013
	3,345	2,841	4,235
Applications for International Protection	2011	2012	2013
	3,422	2,588	4,485

Source: Ministry of the Interior and Eurostat

Procedural guarantees

The right to information, as well as legal assistance, the assistance of an interpreter and access to effective remedies, are minimum guarantees established in Spanish and European law. The Strasbourg Court recently established that Spain violated Art. 13 of the ECHR, which covers the right to effective remedies, in the expulsion of 30 Saharans who applied for asylum in 2011, represented by CEAR.

Readmission Agreements, according to which immigrants who arrive in Spain illegally from third States are returned, neither mention nor regulate the basic procedural guarantees governing these readmission procedures.

Restrictions on freedom of movement in Ceuta and Melilla

In addition to strict border controls, there is also a prohibition on travel to the Peninsula for asylum seekers in Ceuta and Melilla, a factor that explains the decrease (of up to 63.5% in Ceuta) in applications for international protection.

Ceuta and Melilla are thus becoming large detention centres or prison cities, as many people cannot leave whilst their expulsions or asylum applications are processed. Despite repeated court rulings against this practice, and complaints from the Ombudsman, the UNHCR and the Special Rapporteur on Racism and Xenophobia, this situation persists, causing some asylum seekers to withdraw their applications and others to risk their lives attempting to cross the strait hidden on board ferries making the journey.

Readmissions	2011	2012	2013
	1,278	1,409	1,199

Source: Ministry of the Interior

RECOMMENDATIONS

Guarantee the immediate assistance and rescue of any person whose life is in danger at sea, pursuant to international sea treaties.

Suspend forced returns of all persons from countries in conflict, facilitating their access to international protection.

Include in Readmission Agreements clauses on the protection of human rights and procedural guarantees.

Implement the Directive on minimum standards for the granting of temporary protection in the event of a mass influx of displaced persons.

Guarantee access to the Peninsula for asylum seekers whose applications are admitted for processing in Ceuta and Melilla, and do not restrict their free movement within the national territory.

Improve the joint instructions of police and Civil Guard headquarters, the Directorate-General for Domestic Policy and the Directorate-General for Immigration on the treatment of stowaways to guarantee access to asylum procedures.

Improve the information and access of unaccompanied minors to international protection procedures through effective coordination between child protection services, the Asylum and Refugee Office and border posts.

Establish more reliable measures and procedures to promote the access of Non-Governmental Organisations to border premises, immigration detention centres and boats, in cases where stowaways are detected, in order to facilitate identification and advice to persons likely to apply for asylum.

Include a separate assessment of the human rights situation in the country of destination in denial of entry, refoulement and expulsion procedures.

Improve the training of national law enforcement and security services in charge of immigration control in the identification of persons in need of international protection, victims of human trafficking and other vulnerable groups.

Project leader:

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