

**SPAIN 2018**

**Study Beneficiaries of International Protection travelling to their country of origin**



**GOBIERNO DE ESPAÑA**

MINISTERIO DE ASUNTOS EXTERIORES, UNIÓN EUROPEA Y COOPERACIÓN

MINISTERIO DE JUSTICIA

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To that end, the EMN has a network of National Contact Points (NCPs).

The Spanish NCP is composed by experts from the Ministry of Labour, Migration and Social Security, Ministry of the Interior, Ministry of Foreign Affairs, European Union and Cooperation, and Ministry of Justice and the General Prosecutor's Office, It is coordinated by the Deputy General Directorate for Legal Affairs of the Directorate General for Migrations, General Secretariat for Immigration and Emigration, Secretariat of State for Migrations.

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# Beneficiaries of international protection travelling to their country of origin in Spain

## Top-line “Factsheet”

The objective of the study is to offer a general overview of the Spanish experience in the case in which the Beneficiaries of international protection travel to their country of origin. It aims to map, firstly, information on the reasons for such travels of persons granted international protection in Spain. Both international refugee and EU asylum law encompass several grounds whereby protection status may come to an end in circumstances where it is apparent that protection is no longer necessary nor justified. These are referred to as ‘cessation’ grounds. And secondly to analyse the possible consequences of such acts on the international protection status and residence rights of the persons concerned.

The study is structured in four sections. The first section of the study provides an overview of national policy context. This introductory section of the synthesis report will aim at contextualising the study by providing an overview of the national policy priorities related to beneficiaries of international protection travelling to their country of origin.

The objective in Section 2 is to provide information on beneficiaries of international protection contacting authorities of their country of origin or travelling to their country of origin, and the possible cessation of their international protection status as a result. The reasons granting protection status differ between those granted refugee status and subsidiary protection status. These are reflected in the reasons that could lead to the cessation of refugee or subsidiary protection status. This section thus draws a distinction between refugees (section 2.1 and 2.2) and beneficiaries of subsidiary protection (section 2.3).

Section 3 present the Spanish practices in relation to procedural aspects of the adoption of a decision on cessation of international protection based on cessation grounds examined in the previous section. This section will also present information on the procedural guarantees available to third-country nationals throughout the procedure, including the right to an effective remedy. It will also examine the implications that such decision may have on the right to stay on the territory of a Member State by the third-country national concerned by the decision, as well as on the right to stay of his/her family members.

Section 4 finally provides the conclusions of the study.

The procedure of cessation of international protection to the Beneficiaries of international protection contacting authorities of their country of origin or travelling to their country of origin it is a procedure assessed in the Spanish regulations, so the eventual cessation of the concession must respect the rights, deadlines, as well as the possibility that the private person appeals to the decision. Also, in order to proceed with the cessation of the international protection, not only a possible contact with the authority of their country of origin or travelling to their country of origin is taken into account, but other circumstances are valued, that is why the analysis of the Spanish experience does not allow obtaining data, neither statistics nor objective conclusions in relation to the study.

## Section 1: Overview of national policy context [max. 3 pages]

**Q1.** Is the topic of beneficiaries of international protection travelling to their country of origin a national policy priority in your Member State? **NO**

**Q2.** If available, please provide (estimated) **statistics** on the number of beneficiaries of international protection (allegedly) travelling to their country of origin registered from 2012 to 2018 (until 30 June 2018, if available).

Information is not available.

## Section 2: Travels to or contacts with national authorities of the country of origin and possible cessation of international protection [max. 12 pages]

### 2.1. REFUGEES CONTACTING AUTHORITIES OF COUNTRY OF ORIGIN AND RE-AVAILMENT OF THE PROTECTION OF THE COUNTRY OF NATIONALITY

**Q3.** If a refugee in your (Member) State contacts official authorities of their country of origin (e.g. consulates, embassies, or other official representations of the country of origin in the State that granted protection), can this possibly lead to the cessation of his/her refugee status? **NO**

*If no, please go directly to section 2.2.*

### 2.2. REFUGEES TRAVELLING TO AND 'VOLUNTARY RE-ESTABLISHMENT' IN THE COUNTRY OF ORIGIN

**Q9.** Please describe national legislation applicable to refugees regarding their right to travel (i.e. outside the State that granted them protection).

*Please note the right to a travel document for refugees set in Article 28 of the Refugee Convention and 25 of the recast Qualification Directive.*

Article 36(1)(d) of the Asylum Act governs the issuance of travel documents for refugees and, where necessary, for beneficiaries of subsidiary protection. In both cases, validity of the documents is 5 years. There are no formal limitations to the permitted area of travel except the country of origin of the person benefitting from international protection.

**Q10.** Is a travel limitation:

- a)** To the country of origin (or country of habitual residence) specified in the travel document issued to refugees in your (Member) State? **YES**

*E.g. the name of the country the refugee is not allowed to travel to is explicitly mentioned in the travel document.*

*If yes, please elaborate whether this limitation stems from:*

National legislation

*Please specify:*

Practice developed by competent authorities

*Please elaborate:*

Case law

*Please elaborate:*

Other sources

*Please elaborate:*

- b)** To neighbouring countries of the country of origin (or country of habitual residence) specified in the travel document issued to refugees in your (Member) State? **NO**

**Q11.** If refugees travel to their country of origin:

- a)** Do they need to notify in advance national authorities of the State of protection? **YES.** As a general rule, for the issuance of travel documents (irrespective of the destination), a request has to be filed with the Spanish Asylum Office or police station.
- b)** Do they need to request a specific permission or authorisation to do so to a designated national authority in the State that granted protection? **YES**

**Q12.** Can refugees request their original passport from authorities of the State that granted protection? **YES**

*There is no specific procedure, and the assessment is made on a case-by-case basis.*



**Q13.** What are the most common reasons for travel to their country of origin stated by refugees to authorities in your (Member) State?

No data are available.

**Q13a.** Please specify if this information is recorded by national authorities (e.g. in a database).

NO.

**Q14.** If a refugee travelled to his/her country of origin, can this possibly lead to the cessation of his/her refugee status? YES but not as a sole ground (see response under section 2.3). So, in LAW 12/2009, of October 30, regulating the right of asylum and subsidiary protection in Article 42. Cessation of refugee status foresees that cessation of refugee status may apply in cases where they return voluntarily and re-establish themselves in the country from which they fled. In case of subsidiary protection, residence can also cover third countries.

**Q14a.** If a refugee travelled to his/her country of origin, can this have other consequences on his/her refugee status? NO

**Q15.** If travelling to the country of origin may lead to cessation of protection (see question 14), is it specified:

In national legislation?

Article 42 foresees that cessation of refugee status may apply in cases where they return voluntarily and re-establish themselves in the country from which they fled. In case of subsidiary protection, residence can also cover third countries.

**Q16.** Which of the following circumstances are taken into account when assessing cessation of protection (e.g. re-establishment in the country of origin):

Please indicate which options apply. For each of the (ticked boxes) options below, please indicate whether it is based on legislation, case law or (administrative) practice.

- Frequency of travels to the country of origin
- Length of stay in the country of origin
- Specific place of stay in the country of origin
- Reasons to travel to the country of origin
- Other

Please specify: in most cases, cessation relies on the request of the beneficiary.

**Q17.** If travelling to the country of origin could lead to cessation of refugee protection, are there any **criteria to assess the voluntariness** and/or refugee's **intent** to re-establish himself/herself in the country of origin?

In previous cases, the assessment has included the explicit request of the beneficiary of international protection.

**Q18.** Do national authorities encounter any **challenges** when assessing such cases of cessation? YES (including, but not limited to evidence assessment and interpretation of open concepts, such as "set their residence" in the country of origin/in a third country).

**Q19.** Is guidance or any other form of established practice on cessation on the grounds of 'voluntary re-establishment in the country of origin' available to authorities in your (Member) State? NO

## 2.3. BENEFICIARIES OF SUBSIDIARY PROTECTION TRAVELLING TO AND/OR CONTACTING AUTHORITIES OF THE COUNTRY OF ORIGIN

### **Contacting official authorities of the country of origin**

**Q20.** If a beneficiary of subsidiary protection in your (Member) State contacts official authorities of his/her country of origin (e.g. *consulates, embassies, other official representations of the country of origin*), can this possibly lead to the *cessation* of the subsidiary protection status? **NO**

*If no, please go directly to question 23.*

### **Travelling to the country of origin**

**Q23.** Please briefly describe national legislation on the right to travel (i.e. outside the State that granted subsidiary protection) of *beneficiaries of subsidiary protection* in your (Member) State?

Pursuant to article 36 of the Spanish asylum act, beneficiaries of subsidiary protection can be entitled to travel documents whenever this is necessary.

**Q24.** Can a beneficiary of subsidiary protection request a travel document in your Member State? **YES**

*Please note the provisions of Article 25 of the recast Qualification Directive on this question.*

*If yes, please specify: the format is similar to the one issued to refugees*

**Q25.** What are the most common reasons for travel to their country of origin stated by beneficiaries of subsidiary protection to national authorities:

No data are available.

**Q25a.** Please specify if this information is recorded by national authorities (e.g. in a database). **NO.**

**Q26.** If a beneficiary of subsidiary protection in your (Member) State travels to his/her country of origin, can his/her protection status be ceased (e.g. *re-establishment in the country of origin*)? **YES**

**Q26a.** If yes to Q26, is it specified:

*Please indicate whether the same legislative provisions (and/or case law or practice) are applicable in the same way to refugees and beneficiaries of subsidiary protection in your (Member) State.*

In national legislation?

*If box is marked, please specify legislation: LAW 12/2009, of October 30, regulating the right of asylum and subsidiary protection in Article 43.1.b foresees this possibility, but only to the extent that the person has established his/her residence in another country.*

**Q26b.** If yes to Q26, which of the following circumstances are taken into account when assessing cessation of protection:

*Please tick options that apply. For each of the (ticked boxes) options indicated, please specify whether*

### **Guidance and challenges in assessing cases of cessation of subsidiary protection**

**Q27.** Is guidance or any other form of established practice on cessation of *subsidiary* protection available to national authorities? **NO**

**Q28.** Based on previous answers to questions in this sub-section 2.3., what challenges do national authorities encounter when assessing cases of cessation of *subsidiary* protection?

Because there is not much information available, we can't determine any challenges

**Section 3: Adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection [max 16 pages]**

#### **3.1. INFORMING BENEFICIARIES OF INTERNATIONAL PROTECTION**

**Q29.** Are beneficiaries of international protection informed *about possible consequences on their protection status* if they contact authorities or travel to their country of origin? **NO**

### 3.2. REVIEW OF PROTECTION STATUS

**Q30.** Is the status of beneficiaries of international protection that travelled to and/or contacted authorities of their country of origin reviewed in your (Member) State? **NO**

**Q31.** Can a review of international protection status lead to a decision to cease international protection in your (Member) State? **YES, conditioned upon assessing the reasons for cessation in accordance with articles 42 (refugees) and 43 (subsidiary protection).**

A cessation procedure would apply as a general rule.

### 3.3. CESSATION PROCEDURE

**Q32.** Based on circumstances that can trigger cessation grounds explored in section 2, which authorities are involved in the decision to cease international protection status in your (Member) State?

The Spanish Asylum Office deals with the proceedings. The final decision is taken by the Ministry of Interior after the proposal assessed by the Interministerial Commission. Specific procedural guarantees vis-à-vis the beneficiaries are provided for in article 45 of the Spanish Asylum Act.

**Q33.** Can the beneficiary of international protection present contrary evidence or elements during the procedure to cease his/her protection status? **YES**

**Q33a.** If yes to Q33, can s/he present defence:

In writing to the competent authority?

**Q34.** Is there a specific deadline set to issue the decision to (possibly) cease international protection? **YES, six months since the initiation of the proceedings.**

**Q34a.** If yes to Q34, how is the decision notified to the (former) beneficiary of international protection? Is it done:

In writing?

**Q34b.** If yes to Q34, does the decision include the reason(s) for cessation? **YES**

**Q35.** In case a decision to cease the international protection status is adopted:

**a)** What are the timeframes for appealing the decision?

*Please elaborate:* **General rules on appeals against administrative decisions apply, entailing a two-month period to present a judicial appeal.**

**b)** Which authority examines the appeal application?

*Please elaborate:* **The Audiencia Nacional deals with the assessment of the administrative decision-the same in charge of all administrative decisions taking place on asylum requests-see article 45.8 of the Spanish Asylum Act.**

**Q36.** When a competent authority assesses elements to cease (or not) an international protection status, does it also assess the proportionality of a removal from national territory? **YES**

*If yes, please elaborate (e.g. taking into account of the principle of non-refoulement).*

**This is indeed one of the specific procedural guarantees provided for under article 45.1.d of the Spanish Asylum Act. Further, pursuant to article 44.4 of the Act any withdrawal must assess the non-refoulement risk.**

**Q37.** Have there been any court decisions on appeals against a (first instance) decision of cessation of a protection status *due to travels to the country of origin* in your (Member) State? **YES**

If yes, please briefly summarise:

**In one case examined in 2010 (judgement dated October 22, reference number 1660/2006), the Supreme Court decided to award international protection to the former wife and child of a refugee that**

had waived protection. The reasoning of the Supreme Court is very succinct, and was limited to assess whether international protection was also justified for the family members on the Convention grounds- which was confirmed.

### 3.4. CONSEQUENCES OF A CESSATION DECISION

#### ***Right to stay, possible change of status or return***

**Q38.** In your (Member) State, is the decision to cease international protection issued together with the decision to end the residence permit? **NO**

**Q39.** What are the consequences of a decision to cease international protection in your (Member) State on the right to stay of the (former) beneficiary of international protection:

**a)** Automatic loss of the right to stay (in the State that granted protection). **YES**

*If yes*, is the decision to cease international protection accompanied by a return decision? **NO**

**b)** Individual circumstances of the (former) beneficiary of international protection are taken into account (*e.g. the person has a right to stay on other grounds*). **YES**

**Q40.** Can a (former) beneficiary of international protection be granted another status? **YES**

*If yes*, this can be:

A legal migration status

In accordance with article 42.2 and 3.2 of the Spanish Asylum Act, refugees or beneficiaries of subsidiary protection may continue legally residing in Spain in accordance with general aliens provisions. To that effect, the Law foresees that all the period of legal residence will be duly taken into consideration.

#### ***Right to stay of family members and dependents***

**Q41.** In case of a (final) decision to cease international protection status, what are the consequences on family members and dependents included in the initial application for international protection:

Case by case decision if they keep or lose their international protection status and their right to stay

*See case of the Supreme Court, looking into the non-refoulement risk and more generally whether Convention grounds are complied with.*

Other consequences

General alien law provisions would apply.

**Q42.** In case of a (final) decision to cease international protection status, what are the consequences on family members and dependents not included in the initial application for international protection, and who got a residence permit through family reunification with the former beneficiary of international protection.

Other consequences

General alien law provisions would apply.

#### ***Summarising chart and case study(-ies)***

**Q43. Summarising chart** and **illustrative examples** on the adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection

No examples available



## Section 4 Conclusions

**Q44.** With regard to the aims of this study, what conclusions would you draw from your findings reached in elaborating your national contribution? In particular, what is the relevance of your findings to (national and/or EU level) policy-makers?

The procedure of cessation of international protection to the Beneficiaries of international protection contacting authorities of their country of origin or travelling to their country of origin it is a procedure assessed in the Spanish regulations, so the eventual cessation of the concession must respect the rights, deadlines, as well as the possibility that the private person appeals to the decision. Also, in order to proceed with the cessation of the international protection, not only a possible contact with the authority of their country of origin or travelling to their country of origin is taken into account, but other circumstances are valued, that is why the analysis of the Spanish experience does not allow obtaining data, neither statistics nor objective conclusions in relation to the study.



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