

Report on immigration detention centers in Spain for Migreurop

Executive summary

Behind the name “immigration detention centers” hides a reality of imprisonment hard to conceal. The social organizations constituting the Migreurop network collected hundreds of testimonies of persons detained in these centers that relate the harshest and most improbable underside of Spanish immigration. Truly hidden jails, disguised prisons without any penitential guarantee for people who have committed no crime. A black hole, unknown to most citizens, through which have passed some 26,032 people in 2010, according to the public prosecutor office’s report.

In Spain, there are a total of nine immigration detention centers (CIE for Centros de Internamiento de Extranjeros) spread all over the country: Madrid, Barcelona, Valencia, Algeciras, Tariff, Malaga, Gran Canaria, Fuerteventura and Tenerife form a thorny circle that confines the institutional mistreatment of thousands of people each year.

The CIE was created by the first Immigration Law, Organic Law 7/1985 on Rights and Liberties of Foreigners in Spain, in the article 26.2 which expressed the “judicial possibility to decide, for preventive reasons, the entry in non-penitential centers of foreigners concerned by determined expulsion motives during the examination of the record”. Later on, the successive immigration laws broadened the detention motives to cases of return and expulsion due to sanction.

Foreigners placed in the CIE are detained preventively not because they have committed a crime but because of an administrative fault, in this case, not having the required documentation to stay in Spain. The entry into a CIE implies the awaiting of the return to the country of origin, the return to the border or of an expulsion sanction.

Migreurop is a Euro-African network comprised of 38 associations in 13 countries and by activists and researchers whose objective is to publicize the spread of the imprisonment of foreigners lacking a residence permit and the increase of camps within the EU and in transition countries (those which the migrants have to cross to get to the EU) as a central practice of the EU migration policy. In order to find out the situation of the people detained in these camps and to launch a campaign in favor of the right to investigate the CIE, in 2011 Migreurop visited the CIE in 5 countries. Concerning the Spanish state, it carried out 4 visits in the CIE of Aluche (Madrid), Capuchinos (Malaga), La Piñera (Algeciras), and Zona Franca (Barcelona). In Spain, Andalucía Acoge, APDHA (Pro-Human Rights Association), CEAR (Spanish Commission to Help Refugees), SOS racismo and Acsur Las Segovias all form part of the Migreurop network.

This report deals with the Migreurop initiative to attempt to visit all the CIE present on

Spanish territory with a basic double objective (the ultimate demand being the disappearance of this type of detention center):

- a) Check the material, social, sanitary and judicial conditions within the CIE
- b) Promote the free access of the different sections of civil society to the CIE in order to monitor and supervise the strict respect of the detained persons' fundamental rights, having as closer goal the passing of a regulation concerning the running of the CIE.

As the result of this common effort, the report gives details about the life and internment conditions within the centers which we are going to expose now.

Migreurop must point out that in none of the visits have we had access to the inmates; the information gathered should be completed by the voices of the people directly affected. This seems fundamental but in every case, the CIE governors hid behind the "protection" of the detained persons' "right to intimacy", an argument that remains quite sarcastic. Migreurop, which on other occasions has echoed the opinions and allegations of the persons incarcerated in these centers, will continue in this direction. This severe omission does not discredit the report presented here which tries to enrich the picture we have of CIE, a picture that is largely concealed to public opinion.

MOST NOTABLE DEFICIENCIES OF EACH VISITED CENTER

CIE DE CAPUCHINOS (MALAGA): Various institutions such as the Immigration Prosecutor of Malaga and the State Prosecutor General demand the closing of this center because of the deplorable state of its facilities which restricts the center's capacity to 20 men and 25 women. There is no particular overcrowding. The major deficiencies have to do with the state of its facilities. For example, it lacks a decent family unit, there are no cameras, the fire-prevention system is inadequate, etc.

CIE LA PIÑERA (ALGECIRAS): The major problem is the legal uncertainty of what is considered as an extension of the CIE of Algeciras and what is situated in Tariff. Actually, the Algeciras CIE was converted from an old penitentiary center hence the obvious deficiencies concerning the facilities and services. Keeping in mind that the capacity of both centers reaches 350, there were not any special overcrowding problems the day of the visit. In this CIE, the deficiencies concerning the legal guarantees are notable elsewhere. On the one hand, they arise from the fact that there has been no establishment of a Court for the control of the CIE which is compulsory since the last reform of the Immigration Law (LO 2/2009); on the other hand, the non-establishment in the Cadiz Lawyer College of a legal assistance shifts in matters of immigration restricts the detainees' right to legal assistance. Finally, it must be emphasized that potential security problems can arise from the joint internment of persons who have breached the Immigration Law and persons who are expelled for committing a crime.

CIE DE ALUCHE (MADRID): Like the previous case, this center is a converted former Carabanchel jail. Its capacity is 240. But unlike the previous center, and despite the existence of legal assistance shifts, lawyers notably lack interest in the legal treatment of the detainees. Besides this, sanitary care is rare in a center where several uprisings have occurred and where self-mutilation is relatively frequent. The detainees referred to a poor quality of food

and treatment. The visiting hours are very restrictive and take place in rooms separated by screens.

CIE DE ZONA FRANCA (BARCELONA): The center has a capacity of 226 people, and the day of the visit the occupied places exceeded 200, these figures indicate that the center has reached its capacity. Like the Algeciras CIE, there is no separation of the convicted detainees. Moreover, in addition to under-equipped facilities, there is an alarming lack of personnel in charge of the center resulting from poor coordination between the national and Catalan police forces. The employees' and detainees' testimonies tell of a situation with a high level of tension which is not free from violent episodes in a center almost flooded with detainees and with scarce personnel although it is, amongst the visited centers, the center which has the highest number of visits from organizations safeguarding the detainees' rights.

GENERAL CONCLUSIONS APPLICABLE TO ALL VISITED CENTERS

Although the regulation stipulated that this type of facility should not have a penitentiary character, the analysis of the visited immigration detention centers concludes that they constitute real jails - in form and substance - insofar as they retain persons who have not committed any offense apart from an administrative fault consisting of not having one's documentation in order. In all 4 cases, the premises on which they are located used to belong to imprisonment centers and the penitentiary stamp is more than obvious.

This penitentiary character surpasses the mere architecture and physiognomy of the CIE to reach as far as the deprivation of the detainees' rights which on occasion is worst than in penitentiary centers. The legal denial of the immigration detention centers' penitentiary character implies that the quality of the detainees' stay has to be superior to the existing conditions in jails. In other words, the regime applied ought to be more favorable (STC 115/87), something that does not correspond to reality.

The law states that the people placed in the CIE shall only be restricted in their freedom of movement. For this reason, all other rights should be respected under law. However, in many cases, these are violated, for the detainees are subjected, without being criminals, to conditions much worse than those applied to people who have committed an offense. A clear example of this is the restricted access of the detainees to their mobile phones which was observed in all the centers visited.

On the other hand, the associations' members who visited the CIE detected deficiencies in the fire-prevention systems and evacuation plans which could cause terrible events comparable to the fire in the cells of the Malaga police station in 2002 which killed 7 persons.

Visiting the CIE revealed the lack of guarantees concerning fundamental rights outlined in the penitentiary legislation such as the absence of interpreters which makes impossible effective communication and subjects the detainees to disinformation; the absence of guaranteed access to legal defense resulting in defenselessness; the inability to remain with family, the absence of cameras in parts of the facilities which prevents verification of the correct running of the center, the employees' conduct and the prevention of illegal activities

– frequently reported by the detainees to the social organizations. Moreover, the administrative protocols and procedures were found to be inadequate in order to allow the detainees to submit, with security and confidentiality, complaints about the violation of their rights.

Another significant aspect is the infringement on intimacy during communication, with dividing screens that prevent physical contact with family and friends, or violation of the right to moral integrity which stems from having to share a room of a few square meters with numerous people. Furthermore, the complaint formulation procedure is not adapted to the regulation currently in force.

Particularly relevant is the complete strip policy that those about to be placed in the Algeciras CIE have to undergo. This procedure is absolutely intolerable and constitutes a clear and irrefutable violation of human rights. In addition, the fact that in most CIE detainees are not identified by their names but by a number is quite surprising as it depersonalizes and seriously degrades the detained person.

What is more, the detention of ill persons – especially mentally ill persons or pregnant women - is still quite frequent in these centers where deficiencies are more than obvious and which lack resources to provide these people with the required medical attention.

Finally, some of the visited premises, especially in Malaga and Algeciras, have notably deteriorated facilities that, while they are considered inappropriate for a prison because of the risks to the inmates' health and security, have been found suitable for retained foreigners.

For all these reasons, the organizations that constitute the Migreurop network call for the closure of the immigration detention centers as they are considered structures of mistreatment that cannot carry on. Meanwhile, they demand the approval of an organic law on the CIE which regulates the running of these centers and guarantees the respect of the detainees' rights.

PROPOSITIONS MADE BY MIGREUROP

Many of the issues detailed in the report result from the absence of a specific law regulating the legal regime of these centers. This leads to things being run in a discretionary and arbitrary nature which urgently needs to be terminated. That is why the organizations composing the Migreurop network have repeatedly raised their voices to demand a legislation to regulate the running of these centers in order to avoid further violation to human rights. The organizations understand the urgency of passing an organic law and not only a regulation as is intended. This law should be drawn up after social dialogue.

The absence of a law aggravates the situation all the more when the competent judicial authority exerts a scarce or inexistent control over these centers. This confers a practically unquestionable authority to the centers' directors resulting in a serious legal insecurity and a notable defenselessness in the retained people. For all these reasons, Migreurop urges the soon-to-be-constituted government elected on the 20th of November, to urgently address the

following matters:

1. **Expressly forbid immigration detention centers that do not have the CIE legal status.** In order to avoid the repetition of former situations, the regulation draft must expressly forbid the authorization – even temporary or in cases of emergency – of institutions that do not fulfill the detention centers’ requirements for living conditions and minimum services.
2. **Regular and standardized access for the general public and social organizations to detention centers.** The reform introduced by the organic law 2/2009 took up Migreurop’s proposal in this matter by stating in article 62 bis 3) that the legally established Spanish organizations for the defense of immigrants and the relevant international organizations will be able to visit the detention centers. The law refers to the regulation to tackle the development of the visiting conditions.
3. **Communication with the outside world.** The regulation must establish concrete provisions on the access to communication with the outside world which has to be guaranteed with the existence of public telephones and free access to the detainees’ belongings.
4. **Independent medical and social assistance.** In order for detainees to have access to public health services, the CIE must have independent medical assistance freely accessible to them. The same provisions shall be applied for social assistance services.
5. **Visits and communications.** The right to visits from families and whoever else requested by the detainees shall be guaranteed along with the concrete commitment that the infrastructure will ensure dignity and intimacy during these visits.
6. **Mechanisms to avoid mistreatment.** Whilst ensuring respect to personal intimacy, recording cameras shall be compulsory both within the CIE and in the vehicles used to take detainees to the airport and other places such as those where the expulsions take place, in order to avoid mistreatment and torture and, should they occur, punish it.
7. **Transparency and control.** In order to achieve total transparency, the regulations have to include a mechanism which informs civil society about the situation and management within the CIE. The judge in charge of authorizing the initiation, monitoring and control of the administrative detention, will have to authorize any modification of the regime affecting the detainees, incorporating any complaint in both the administrative and judicial records.

Translated by Cloe Devlin