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**HUMAN RIGHTS WITHIN IMMIGRATION
DETENTION CENTRES IN EUROPE:
COMPARATIVE CASE STUDY OF SPAIN,
ITALY AND SWEDEN**

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Abstract

This working paper analyses the human rights of migrants deprived of liberty in immigration detention centres of three European countries: Spain, Italy and Sweden. The detention facilities are used to retain immigrants in an irregular administrative situation in order to ensure their expulsion of the state's territory. The main objective of the research is to determine whether the differences among these states regarding immigration detention conditions lead to three distinct models – one for each country – each of them implying a different level of protection of the detainees' rights. The human rights studied are to be classified in four different categories: oversight, judicial protection and legal assistance, adequate standard of living and freedom from inhuman treatment.

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1. Introduction

Immigration detention centres are official facilities where non-EU citizens who do not fulfil the conditions to entry, stay or residence in a EU Member State are deprived of liberty. The purpose of this so-called administrative detention is to guarantee the presence of the individual during the arrangement of his deportation, expulsion or removal to his country of origin, a country of transit or a third country in which the migrant will be accepted (EP& CEU 2008). Around 600.000 migrants are deprived of their liberty within the EU territory for “migratory management” reasons every year (Open Access Now 2014, p.4).

Even though a great number of entities and activists have exposed repeatedly the severe implications of immigration detention for human rights protection, this reality is still virtually unknown for a large part of the European public opinion. Furthermore, the research is especially relevant taking into account that the detention conditions are believed to be more controversial in some countries. Thus, this should be a reason to study why and how other states manage to rule their centres in a way which is more concerned about human rights respect. Nevertheless, any comparative investigation shall not overlook the particular realities of migratory flows affecting different European countries.

The empirical and theoretical contextualization of this paper will be based on an overview of the main international treaties and conventions on human rights and the European legal framework for immigration detention, as well as the national regulative documents for each Member State studied. This section will also include a brief glance at the current debate regarding the legitimacy, effectiveness and human costs of the immigration detention system in Europe.

In regards to the research approach, a comparative study between the cases of three European countries (Spain, Italy and Sweden) will be held in order to examine the differences among the case studies and the resulting conditions affecting detainee’s rights. Thus, the research question that this paper will try to answer is the following: Can the differences among Spain, Italy and Sweden regarding immigration detention conditions explain the diverse treatment of human rights in the immigration detention centres of these countries? The main hypothesis of the investigation states that the

variations between the three states lead to three different models which explain the diverse outcomes regarding human rights protection.

As regards the methodology, a qualitative comparative method will be used to give an answer to the research question. The investigation will be based on the comparative case study of the immigration detention conditions in Spain, Italy and Sweden. The differences regarding the detention conditions leading to diverse levels of human rights protection among the three countries will be analysed. At the same time, the human rights involved will be classified in four categories: the right to oversight; the right to an effective judicial remedy, as well as the right to legal assistance; the right to a standard of living adequate for the health and well-being; and finally, freedom from inhuman or degrading treatment or punishment.

In order to develop the investigation, there has been a documentary research of legal documents and reports made by international organizations such as the United Nations and the Council of Europe, as well as NGOs concerned about migrants' rights and the Ombudsman. On the other hand, the research has also been based on interviews and study visits. The interviews to experts include an executive office of a Swedish detention centre, a lawyer of the legal assistance service at a Spanish centre and a doctor specialized in Tropical Medicine and International Health. Several visits to five migrants retained in the detention centre of Barcelona (Spain) have been carried out. A study visit in the detention centre of Märsta (Sweden) has also been conducted. Finally, several group meetings of *Migra Studium*, a Spanish NGO in charge of visiting detainees, have been attended.

With respect to the structure of this working paper, the investigation will begin with a theoretical and empirical contextualization of the grounds for immigration detention. The following section develops the methodology used to determine which are the implications for human rights when it comes to immigration detention conditions. The results for each case study will be analysed and then presented in a summing-up table. The paper finalizes with a conclusion and some final reflections.

2. The grounds for immigration detention

The grounds for immigration detention are based on a double legal framework: the European and the national for each country. Thus, this leads in practice to the existence of different models regarding the conditions for administrative detention in the EU Member States. It is also important to take into account the current debate around immigration detention in Europe and the criticism coming from several organizations and concerning its legitimacy and effectiveness and the human costs for the detainees.

2. 1. Immigration detention centres in a European framework

The European legal framework which regulates the definition, detention and removal of so-called illegal migrants is mainly based on two legal documents: the Schengen Borders Code and the Return Directive. Article 5 of the Schengen Borders Code determines the conditions required for a third-country national in order to stay legally within the borders of the EU territory. These requirements include the possession of a valid travel document and a valid visa, justification of the purpose of his stay and the means of subsistence and the fact of not to be included in the Schengen Information System (SIS) nor to be considered “a threat to public policy, internal security, public health or international relations of any of the Member States” (EP&CEU 2006, p.5).

On the other hand, the 2008/115/EC Directive of the European Parliament and of the Council of 16th December 2008, commonly known as the Return Directive, specifies the “common standards and procedures in Member States for returning illegally staying third-country nationals” (EP&CEU 2008, p.1). It also sets specific rules to carry out administrative detention of individuals in Immigration Detention Centres around the EU territory.

Thus, the situations which can lead to administrative detention of migrants may be the denial of the application for asylum protection, the deprivation of the right to renew a residence permit after losing a job, the failure to gather all the required document to get a residence permit, the failure to provide the required documents or to prove sufficient resources at the borders when arriving in Europe, overstaying after the expiry of a tourist visa or the failure to move from one visa category to another (Open Access Now

2014).

In fact, even if the third-country national does not accomplish the conditions required by the Schengen Borders Code, Member States “may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons” (EP&CEU 2008, p.5). This means that Member States are not under obligation by European law to execute a return process in any cases.

Furthermore, according to article 15 of the Return Directive, detention must be used as a last resort such as when less coercive measures cannot be sufficient. It is especially justified when there exist objective reasons to believe there is a “risk of absconding” or when the individual concerned “avoids or hampers the preparation of return or the removal process” (EP&CEU 2008, p.8). Moreover, the mentioned directive encourages Member States to make the voluntary return of third-country nationals a priority. Consequently, a decision implying detention should be always based on the individual case of each migrant concerned. Nevertheless, the reality that many NGOs have pointed out is that very often detention is not being used as an exception, but as a general rule. This indicates that in practice, some Member States would have been making systematic use of detention (Open Access Now 2014, p.20).

2. 2. The Spanish, Italian and Swedish legal framework for immigration detention

In Spain, the immigration detention takes places in *Centros de Internamiento de Extranjeros (CIEs)*, these being responsibility of the Interior Ministry (*Ministerio de Interior*). Currently, there exist 8 immigration detention centres in Madrid, Barcelona, Valencia, Algeciras, Tarifa, Gran Canaria, Fuerteventura and Tenerife. 11.325 migrants in 2012 and 9.002 in 2013 were deprived of liberty in the Spanish detention centres (Ríos, Santos & Almeida 2014, p.37).

The national legal framework relevant to immigration detention is based in the Organic Law 4/2000 of 11 January, on the rights and liberties of foreign persons in Spain and their social integration, as amended by Organic Law 2/2009, of 11 December 2009

(Aliens Act or LOEX) and the Royal Decree 162/2014 of 14 March, approving the Regulation of the functioning of the CIEs (GDP 2013, p.2).

On the other hand, the Italian immigration retention system is complex and compound by different types of official facilities according to their specific purposes. Nevertheless, this paper only addresses the *Centri di Identificazione ed Espulsione*, where migrants in removal procedure are deprived of liberty. There are 13 detention facilities located in Bari Palese, Bologna, Brindisi-Restinco, Caltanissetta Pian del Lago, Catanzaro-Lamezia Terme, Crotone Sant'Anna, Gorizia-Gradisca d'Isonzo, Milano, Modena, Roma-Ponte Galeria, Torino, Trapani-Serraino Vulpitta, Trapani Milo (JRS Europe 2013). The number of immigrants detained in 2012 was 7.944 and 6.016 in 2013 (AIDA 2014a).

The principal legislation governing immigration detention in Italy is compound by *Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, e successive modificazioni*, (Testo Unico sull'immigrazione), Legislative Decree 25 luglio 1998, n. 286, updated the 13 August 2012; Legislative Decree 30 maggio 2005, n. 140, transposing Directive 2003/9/EC on reception of asylum seekers (Reception Conditions Directive); Legislative Decree 19 November 2007, n. 251, transposing Directive 2004/83/EC on qualification and status of refugee or person needing international protection (Qualification Directive); Legislative Decree 28 gennaio 2008, n. 25, modified by the Legislative Decree 3 ottobre 2008, n. 159, transposing Directive 2005/85/EC on granting and withdrawing refugee status (Asylum Procedure Directive) (JRS Europe 2013).

In Sweden, the immigration detention is the responsibility of the Swedish Migration Board (*Migrationsverket*), a specialised body which is part of the Ministry of Justice (Flynn 2011, p.27). There are five immigration detention centres in Sweden located in Märsta, Flen, Gävle, Göteborg and Åstorp, with a total capacity of 255 places. 2.550 immigrants were held in detention during 2012 (Migrationsverket 2015, p.5). 2005 Aliens Act and 2006 Aliens Ordinance represent Sweden's main legislation concerning immigration and asylum regulation (JRS Europe 2010).

2. 3. Legitimacy, effectiveness and human costs: a current debate about the detention centres

In spite of the fact that the Return Directive mentions that “third-country nationals in detention should be treated [...] with respect for their fundamental rights and in compliance with international and national law” (EP&CEU 2008, p.2), the above-mentioned directive does not indicate all the detainees’ rights specifically. For this reason there exists a gap between the European and International conventions and treaties on human rights - such as the Universal Declaration of Human Rights and the European Convention on Human Rights - and the EU legal framework in which Member States deal with implementation of administrative detention. Moreover, even when the rights of the migrants are contemplated in the European and the national legislation, a failure to guarantee the fulfilment of the detainees’ human rights is to be observed often within the immigration detention centres around Europe (Open Access Now 2014, p.3).

In this line, the current debate concerning the legitimacy of immigration detention and its linkage with serious human costs – especially psychological, physical and familiar - is to be highlighted. For instance, the Court of Justice of the European Union has expressed its consideration that the mere fact that a migrant is staying irregularly should not justify a punishment by imprisonment (Open Access Now 2014, p.13).

Another argument against administrative detention stresses that, in fact, it often fails in achieving its primary aim of removal or deportation of the third-country national concerned. Article 15 of the Return Directive states that “it is necessary to ensure successful removal” in order to justify the maintenance of detention (EP&CEU 2008, p.8). Nevertheless, in 2012 the European Commission officially recorded the gap between the 484.000 migrants issued with a return decision and the 178.000 who effectively left EU territory (European Commission 2014, p.3). Moreover, most of the detainees in Italy are not returned to their countries of origin. For instance, only the 16% of the interns of the Trapani Milo were finally deported in 2012 (Open Access Now 2014, p.11). The situation is similar in Spain, where around half of the detainees are not expelled of the country – the 52% in 2012 and the 47% in 2013 (Ríos, Santos & Almeida 2014, p.37).

In regards to the length of detention, the Return Directive stresses in article 15.1 that it shall be as short as possible and “only maintained as long as removal arrangements are in progress and executed with due diligence” (EP&CEU 2008, p.8). The above-mentioned directive also establishes a common maximum length of duration of 18 months. This has actually stimulated many Member States to increase their national maximum period of detention. In this line, the Secretary General of SIULP (Italian Trade Union for Police Officers) has stated that this “will not have any positive impact on the effectiveness of deportation, but will generate enormous costs” (Open Access Now 2014, p.11).

3. Immigration detention conditions and their implications for human rights protection

The immigration detention centres of Spain, Italy and Sweden present some diverse features to be taken into account in order to compare the three models and measure the level of protection of detainees’ rights in each one. These analysed characteristics can be classified into categories representing different human rights, such as the right to oversight, the right to have effective judicial protection and legal assistance, the right to an adequate standard of living and the freedom from degrading treatment.

3.1. Oversight

In regards to the right to oversight, the aspects to be studied include institutional transparency, the detainees’ access to information and contact with the outside world and the civil society’s access to the centres’ facilities. Firstly, transparency and accountability are clue to guarantee a real prevention of human rights violations in centres where individuals are deprived of their liberty. Many organizations have claimed the importance of the access to information and data on the existence and operation of detention places (Open Access Now 2014, p.27).

As far as the detainees’ access to information is concerned, the individuals should have real access to the official documents about their own administrative situation and the

reasons of detention. The centres' authorities shall make sure the detainees are aware about their own rights and obligations (EP&CEU 2008, p.9). The individuals should also be informed about the estimated day of their deportation, in order to have time to arrange their arrival to their countries of origin. According to article 12.2 of the Return Directive, detainees hold the right to receive a written or oral translation - in a language they understand - of the information about return and entry-ban decisions, as well as decisions of removal concerning themselves (EP&CEU 2008, p.7).

Regarding to the access to detention facilities for civil society – this including detainees' families, lawyers and NGOs – several limitations have been detected around Europe. Firstly, it is important to stress that according to article 16.4 of the Return Directive, “relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities” (EP&CEU 2008, p.9). However, there exist in practice various restrictions, which contribute in weakening the civil control, and may affect the visits' schedule, limiting meetings only on certain days of the week and in certain hours; the duration of visits, which can be limited to 30 minutes including the time needed to document the visitor and check their belongings and the time needed by the staff to bring the detainee to the visit facilities; as well as the amount of visitors per meeting, which can be limited to one person. Other restrictions regard the modalities of the visits, which may be obstructed through panels or without any intimacy, under the watch of prison guards and the restrictions on giving items, such as pens, to detainees. The arbitrariness of the staff's decisions regarding to so-called rules about the visits has also been highlighted by NGOs in charge of visiting detainees. Lastly, it is important to report the prohibition of taking notes during the visit, which is essential to conduct a proper civil supervision in case of limited institutional transparency (Open Access Now 2014).

Finally, the detainees may experience limitations regarding to their contact with the outside world, these including restricted access to the mail and to the use of the Internet and the telephone, the cost of the telephone calls and the lack of confidentiality during this contact. Even though article 16.5 of the Return Directive points out the obligation to inform the detainees about their right to contact with NGO's and other national and international organizations (EP&CEU 2008, p.9), research has highlighted the failure of ensuring this right within some immigration detention centres.

3.2. Judicial protection and legal assistance

The right to effective judicial protection - established by article 8 of the UDHR and article 13 of the ECHR - and the right to legal assistance - covered by article 11.1 of the UDHR and article 6.3 of the ECHR -, are ensured by European law in theory. Article 13 of the Return Directive states that third-country nationals concerned “shall be afforded an effective remedy to appeal against or seek review of decisions related to return” and “shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance” (EP&CEU 2008, p.7). The protection of these rights is essential to enable detainees to contest decisions on administrative detention and deportation. Nevertheless, some features of the different models should be studied in order to determine if these rights are guaranteed in practice.

First of all, the access to the professional data of the migrant’s legal aid lawyer and the guarantee of free telephone contact with this person are of essential importance for detainees to assure their access to free legal aid. Moreover, there may exist a specific institution in charge of providing a legal guidance service within the centres. In this case, the fulfilment of the detainee’s right to legal aid might be more efficiently accomplished, as well as a greater awareness among the individuals concerned about the rights they hold by law.

Secondly, to guarantee the right to an effective remedy in law and practice, the detainees should not always be provided with all the documents concerning their rights and duties, but also they should be given an explanation. It is important to note that the language used in a legal document might be of difficult understanding, especially when it is not offered in one’s mother tongue. Furthermore, the access to the translation of these official documents is a right to be held by the detainees, which is however not always fulfilled (Open Access Now 2014).

Unfortunately, many European NGO’s have reported limitations which effect negatively the guarantee of the migrant’s rights during administrative detention. For instance, some Member States have been accused to have inadequate or insufficient systems for legal assistance. Some features of the models that might threat the protection of these rights can be classified into categories. Firstly, concerning the system for legal assistance, some anomalies – such as restricted access to lawyers and the lack of display of a lawyers’ list – should be studied. Related to the access of

information and the awareness about detainees' rights, the main potential restrictions regards the absence of documents regarding the migrants' rights, duties and legal status. It is important to stress that article 12.1 of the Return Directive specifies that information about available legal remedies should be available in a language the detainee can understand (EP&CEU 2008, p.7). Finally, connected to material problems, the possible lack of guarantee of confidentiality of exchanges and the limitation of time regarding legal consultancy should be studied, as well as the fact that the Member State does not actually cover cost of interpretation (Manzanedo et al. 2014), (Open Access Now 2014).

According to article 15 of the Return Directive, Member States are obliged to “provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention” (EP&CEU 2008). Nevertheless, some NGO's have reported that judicial control concern to immigration detention is not systematic in some Member States. Thus, the judicial review should not be subject to the detainee's initiating request, but ought to be implemented automatically. Moreover, the judicial authority in charge of the judicial control should have expertise in immigration (Open Access Now 2014, p.25).

3.3. Adequate standard of living

According to article 25.1 of the UDHR all human beings hold the right to a standard of living adequate for their health and well-being. In order to determine the fulfilment of this right, the immigration detention centres should guarantee a minimum standard of quality of the services in the centres –either public or private provision -, such as social and cultural assistance and healthcare, as well as the infrastructures, the facilities and the material conditions. It is also important to take into consideration the type of management and staff ruling the centres, the length of detention and the amount of public expenditure intended for funding them.

Regarding the medical assistance, article 16.3 of the Return Directive states that “emergency health care and essential treatment of illness shall be provided” (EP&CEU 2008, p.8). Consequently, in order to promote an appropriate medical service in the detention centres, Member States shall provide emergency health assistance 24 hours

per day, a service which is to be equipped with the adequate material. Moreover, it shall be ensured that the medical staff – compound by doctors and auxiliaries or nurses – is sufficient to cover the detainees’ necessities and always have regards to the detention centre’s capacity. The detainees are to be given the necessary medical treatment and in any case the treatments that were being followed before the retention should be stopped because of the implementation of detention. Finally, in case of an emergency or situation which requires a specific treatment or equipment or specialist care absent in the centre’s facilities, detainees are to be transferred to an appropriated hospital or sanitary centre with the greatest celerity (Ríos, Santos & Almeida 2014, p.57).

In order to prevent an improper use of psychotropic drugs, it is of great importance that immigration detention centres provide psychological assistance. Usually, the detention’s conditions and the situation that detainees have to go through have great negative psychological effects such as depression, anxiety, sleeping disorders and increase of violent behaviour.

An adequate social and cultural assistance shall be guarantee by Member States to ensure the resolution of problems affecting the detainees’ coexistence; identification of vulnerable persons – such as asylum seekers or victims of trafficking -, management of leisure and cultural activities; communication with detainees’ families; management of the interpretation services; assistance related to the deportation and information about the detainees’ legal status. Thus, the social workers in charge of this service ought to have proper knowledge concerning human rights, conflict resolution, immigration, international protection, intercultural mediation and gender violence issues (Ríos, Santos & Almeida 2014, p.65).

Some aspects concerning the infrastructures, the facilities and the material conditions of the detention centres should also be studied. The facilities offered in the venues should include administration, security service, medical assistance, social, juridical and cultural assistance, dining room, detainees’ accommodation, bathroom, visit facilities, lawyers room and sport and leisure space (Ríos, Santos & Almeida 2014, p.49). Moreover, the infrastructures shall satisfy proper conditions regarding accessibility and hygiene. Finally, the detainees are to be provided with sufficient and quality material conditions concerning food, clothes and products for personal hygiene.

3.4. Freedom from inhuman treatment

Article 5 of the UDHR and article 3 of the ECHR state the right of every individual to be free from cruel, inhuman or degrading treatment or punishment. According to the Return Directive, all individuals detained in the centres “should be treated in a humane and dignified manner” (EP&CEU 2008, p.2). For this reason, detainees should be free from torture, violence, arbitrary punishment and degrading, cruel and inhuman treatment, as well as threats. In order to determine the level of protection of this right in each country model, the security system and the medical reports are the main aspects to be studied.

An effective video surveillance system – especially in the seclusion rooms - is essential to promote the fulfilment of the detainees’ rights. A supervisory judge should access and watch random recordings in order to ensure an adequate and preventive security system. A different way to avoid inhuman treatment in the immigration detention centres would be the creation of a Supervision Agency. This would be in charge of evaluate preventive police activity concerning identifications, coercive methods, use of weapons or body searches; establish a normative protocol for the above-mentioned police activities; publish the results of its evaluations and propose more adequate methods (Ríos, Santos & Almeida 2014, p.151).

In regards to the medical reports, they are indispensable for the detainees to denounce a case of ill treatment. The primary medical reports shall be as detailed and exhaustive as possible and should include, at least, the type of injury, the exact localization and its morphology, dimension and chronological evolutionary status. Furthermore, a forensic expert should elaborate another report at the request of the judicial or governmental authority. This shall include medical-legal aspects of the injury and vouch for the psychological status of the individual concerned. Finally, there exist several conditions to guarantee the impartiality and objectivity of the medical reports, this including the possibility to choose a doctor different from the one designated by the authorities; the privacy of the examination, which should never happen under police presence; the existence of informed consent and the prevention in the medicals report’s delivery – which should not be given to the police, but to the person concerned (Ríos, Santos & Almeida 2014).

4. The cases of Spain, Italy and Sweden

This section examines the immigration detention conditions of the three case studies analysing four categories related to the situation of four human rights already mentioned: oversight, judicial protection and legal assistance, adequate standard of living and freedom from inhuman treatment. Finally, the results of the research are presented in a summing-up table which intersects the three countries with the variables regarding each type of human right.

4.1. Spain

Oversight

According to law, the detainees shall be given a news bulletin written in a language they understand including information about their rights and duties, the detention centre's rules and their right to make petitions and complaints (Ministerio del Interior 2014c, p.18). Even though, both the Control Court resolutions and the detainees' complaints indicate that this information is not supplied very often (SJMe 2015, p.35). The Spanish Ombudsman has stated that the information concerning international protection is not always provided (Defensor del Pueblo 2014, p.96).

In this line, the Supervision Court of the CIE of Madrid has stressed the fact that the detainees should be given a copy of their administrative record (SJMe 2015, p.27). It has been reported that many of the detainees were not notified about the details of their expulsion, or the information received was incomplete or imprecise (Defensor del Pueblo 2014, p.95) (SJMe 2015, p.37).

The staff of several CIEs has been accused of arbitrarily limit the NGOs' right to visit detainees restricting the number of visitors to one, constantly changing the visits' schedule or indicating that a certain immigrant is not detained any more when in reality he is still in the centre. Interpretation services are not granted and NGOs often use other detainees as translators during their visits. The CIE's Court of Supervision has stated that the NGOs cannot be demanded a closed list of people previously accredited (SJMe 2015, p.27).

Regarding the institutional transparency in Spain, it is important to highlight that several NGOs have requested the data about the number of immigrants detained and expelled in 2014. However, the Spanish government has never made this data public.

Judicial protection and legal assistance

The most common complaint among the detainees of the Spanish centres is the lack of information about their own juridical situation. Most of the immigrants visited by NGOs do not have contact with their lawyers due to obstacles related to the telephone communication, the access to their own documents and the impossibility to share them with their lawyer. It has been reported that in the CIE of Madrid, the personal legal expedient has been being given to the detainees lately. However, this is still not the usual situation in the rest of the Spanish centres (SJMe 2015, p.35). Thus far, only the CIEs of Madrid and Barcelona provide juridical services (SJMe 2015, p.32).

José Javier Ordóñez Echeverría, lawyer of the legal assistance service at the CIE of Barcelona, points out several deficiencies of the Spanish legal system. For instance, the implication of two lawyers, one regarding the expulsion order and the other for the detention order, leads to a duplicity of the legal council. This slows down the whole process, while rapidity is very important since the period for appealing the detention order expires in three days.

According to Ordóñez Echeverría, both the judges and the legal aid lawyers are frequently in an overwork situation. Consequently, the features of each different case are not often taken into account, which leads to legal defence of poor quality. Moreover, these professionals mostly do not have expertise in immigration.

Adequate standard of living

According to the Spanish Jesuit Service to Migrants (SJMe), currently none of the immigration detention centres in Spain provide facilities and services qualified enough to guarantee the fulfilment of the law and the detainees' rights (SJMe 2015, p.15). As stated by this NGO, it is especially severe the case of the centre in Algeciras.

There only exist social services, supplied by the Red Cross, in the detention centres of Madrid and Barcelona, the conditions of which are “precarious” (SJMe 2015, p.32). The human resources are not enough due to the amount of detainees and their profiles’ complexity and diversity. Moreover, the lack of activities to fill the amount of free time of the detainees leads often to tensions and anxiety among them.

Despite the fact that the CIEs should have a permanent medical service by law, the CIE of Madrid do not supply this service at night nor afternoons during weekdays while the rest of the centres only have it during weekdays’ mornings (Defensor del Pueblo 2014, p.91). The fact that there is no medical assistance at night means that the police is responsible of deciding if an ill detainee is in danger so this person should be brought to a hospital or the illness is not severe and it could wait until the following day. Nani Vall-lossera, doctor specialized in Tropical Medicine and International Health, stresses the risks of these situations, since the police do not have an adequate education to take such important decisions.

It has also been reported that the medical informs are not rigorous enough. This leads to situations in which people who suffer an illness do not follow a proper treatment and have to live in the same rooms with healthy detainees (SJMe 2015). According to the Spanish ombudsman, the language is “an obstacle” for the communication between the medical services and the detainees (Defensor del Pueblo 2014, p.92).

As stressed by SJMe, there are neither material nor human resources to guarantee the adequate treatment of the detainees who suffer from a mental illness. There is no infirmary or special area to separate these interns to the rest of the detainees and to ensure a qualified attention (SJMe 2015, p.25).

Several NGOs have reported the severe deficiencies regarding to the antiquity and the lack of maintenance and renovation of the buildings. Some of the immigration detention facilities are located in former prisons which could not be used any longer because they did not fulfil the minimum habitability conditions (SJMe 2015, p.32). Even the public prosecutor has required in several occasions the closing of the CIE in Algeciras and in Málaga, which was actually closed because of these reasons.

Some other detainees’ complaints during 2014 are the lack of warm water in the showers; windows covered with metal plate with small orifices; cold, humid and dirty

facilities; some of the telephone cabins were out of service; or the small dimensions of the open-air areas (SJMe 2015, p.33). Moreover, the CIE of Valencia has suffered a bedbug infestation for several months in 2014.

According to law, the CIEs' staff, which is formed by police and public officers, shall receive training about human rights, immigration affairs, prevention and security. Nevertheless, several NGOs deny this education has been given and denounce the immigration detention approach to be very similar to the penitentiary system. Regarding to the length of detention, two months is the maximum while the average is 22 to 23 days according to the Interior Ministry (Ministerio del Interior 2014a, p.2).

Besides the regular annual cost of 8,8 million euros of the CIEs, the Interior Ministry announced two additional investments when the new Regulation was approved. An extra expenditure of 3 million euros was intended to improve the centres' services such as the social, medical and interpretation services as well as several supplies including clothing and pharmaceutical and personal care products. Moreover, another extra 2,56 million euros were to be used to improve the centres equipment and facilities as the leisure areas (Ministerio del Interior 2014b) (Defensor del Pueblo 2014). However, none of these improvements have been observed by the NGOs. The Spanish government has blamed the low budget to finance the detention centres, whereas it has also announced lately its intention to build three new CIEs.

Freedom from inhuman treatment

Regarding the security system, Migreurop has highlighted that the video surveillance is in general insufficient to guarantee the detainees freedom from ill-treatment and the lack of security and confidentiality of the administrative process of complaints regarding violations of their rights (Migreurop 2011, p.57). It is important to point out that the Spanish Supreme Court has annulled four controversial articles of the royal decree approved in 2014 which regulates the functioning of the CIEs, including one allowing strip-searching (SJMe 2015, p.30).

Ordóñez Echeverría highlights the impunity of the police officers and the existence of witnesses of threatening, insults, reprisals and even physical abuses inside the detention

centres. Nevertheless, the police normally expulses the witnesses before a trial takes place or claims the injuries to be caused by fights between the detainees.

According to the law, the immigrant will have a medical check when being detained. The medical report will include an injuries part when applicable, to report if the injuries were suffered before or after the detention (Ministerio del Interior 2014c). When the injuries were not reported before, the medical authorities must inform the Instructional Court. However, some obstacles to access their own medical report have been pointed out by several detainees (SJMe 2015, p.43). The Spanish Ombudsman has highlighted the deficiencies concerning the injuries' description due to the lack of photographs attached (Defensor del Pueblo 2014, p.93). Moreover, according to Ordóñez Echeverría there is no confidentiality during the medical visits due to the presence of police officers.

4.2. Italy

Oversight

Even though the problems of accessibility to the CIEs by the civil society has diminished lately, *Medici per i Diritti Umani* (MEDU) has reported limitations which have been always blamed upon security and public order issues by the authorities. MEDU pointed out that this situation “reveals in a clear fashion, in addition to the inevitable internal tension, the intrinsically disagreeable nature of these facilities and their resulting closure to the outside world” (Barbieri et al. 2013, p.21).

According to the Asylum Information Database (AIDA), lawyers, family members, NGOs and the UNHCR have access to the centres, but with some limitations. Open Access Now has denounced the absence of documents concerning the detainees' rights and duties (Open Access Now 2014, p.25). Furthermore, access to newspapers and Internet is often not guaranteed (AIDA 2015, p.84).

Moreover, the regular restrictions to access the official data indicates a “lack of accountability on behalf of the Ministry of the Interior with regards to the cost and indeed the efficiency of the entire CIE system” (Barbieri et al. 2013, p.21).

Judicial protection and legal assistance

According to the Special Rapporteur on the human rights of migrants, the Italian appeal system for detention orders is “unnecessarily complex” since it requires two parallel appeal procedures. This can be even more complicated taking into account that “full interpretation is not always granted throughout the whole legal procedure” and that migrants “have limited access to information in detention facilities, and often have limited access to funds or legal advice” (Human Rights Council 2013, p.17).

Even though there exist automatically judicial review, the validation hearings before the lay judge are “deeply flawed” and “really a mere formality” since the merit of the case and the personal circumstances are rarely evaluated (AIDA 2015, p.93). Furthermore, “the confirmation of the orders appears to be limited to formal checks, thus resulting in a lack of real judicial control over the order” (Human Rights Council 2013, p.17).

Despite the effective access to free legal assistance by law and in practice, there exist some restrictions. The time with the legal assistance is limited, the confidentiality of exchanges is not always guaranteed, a list of lawyers is sometimes available but not displayed and the interpretation costs are not covered by the state (Open Access Now 2014, p.25). The body running the CIE is also responsible to provide legal assistance inside the centre. However, this service is not always supplied or “usually provide a low quality legal counselling” (AIDA 2015, p.95).

The judicial authority responsible to decide whether a detention order should be extended is “a Justice of the Peace without any particular expertise on immigration issues”. Moreover, “court-appointed lawyers for migrants appealing their expulsion or detention orders are often not specifically trained in migration and asylum matters” (Human Rights Council 2013, p.17).

Adequate standard of living

According to the law, the services supplied in the Italian CIEs shall include interpretation, cultural mediation, social assistance, legal orientation, psychological support and health care. However, these amenities have been reported to be insufficient, inadequate and even absent very often.

Many NGOs have pointed out a lack of areas and recreational activities in the Italian detention centres. AIDA has stressed the “empty time” resulted from the deprivation of leisure and educational activities as “one of the most critical aspect of detention conditions” (AIDA 2015, p.87). Moreover, spaces for worship have been reported to be completely inadequate in many CIEs. It is worth knowing that MEDU has qualified as “worrysome” the practice of giving the opportunity to take part in recreational activities only as a reward for good conduct in some centres, such as Bologna and Gradisca d’Isonzo (Barbieri et al. 2013, p.24).

The UN Special Rapporteur on the human rights of migrants has defined the detention conditions in Italy as “poor facilities, including lack of adequate facilities for exercise, intermittent hot water, poor hygiene, including limitations on soap and laundry, jail-like conditions in which detainees are locked in cells, and lack of privacy” (Human Rights Council 2013, p.16).

According to MEDU, the CIEs facilities are “completely incapable of guaranteeing a decent standard of living to the migrant detainees”. In most of the detention centres visited by the NGO the standards of cleaning and maintenance were not adequate and the spaces were tight. For instance the amenities in Rome were “completely decrepit” and in Bologna “the very minimum requirements for liveability were absent”. (Barbieri et al. 2013, p.21). AIDA has reported that the accommodation blocks in some CIEs contain “small cages in which there are rooms for detainees” (AIDA 2015, p.86).

The detainees often face restrictions regarding their right to access adequate health care. Some of these limitations reported are the lack of basic medicines, specialized medical personal such as psychiatric and gynaecologist and access of local public health units to the CIEs; poorly structured services; the difficulty of access to care and diagnostic services within the national healthcare services or the reciprocal mistrust between detainees and medical staff (AIDA 2014b, p.72). The hygienic-sanitary conditions appear to be inadequate in many detention centres. The clean conditions and the hygienic services such as showers and toilets are reported to be insufficient (AIDA 2015, p.88).

In Italy the detention centres’ management is assigned to private companies through public procurement contracts, exclusively based on a “value for money criterion”

(AIDA 2015, p.83). The staff in the centres are not prepared and trained for working in closed environments and “often have limited experience working with foreigners” (Human Rights Council 2013, p.16).

In 2011, the total cost for the management of all services within all immigration detention centres in Italy was of 18.6 million euro (Barbieri et al. 2013, p.23). A public spending review unified the maximum daily expenditure at 30 euro per person, whilst in some detention centres, as it was the case of Modena, it was 72 euro before (AIDA 2014b, p.72). The budget reduction resulted in a reduction in staff and, according to most of the managing authorities, “the impossible to guarantee basic services [...] unless they choose to operate at a loss” (Barbieri et al. 2013, p.24).

The maximum length of detention has been reduced from 18 months to 90 days by virtue of Law 161/2014 in November 2014. According to the Ministry of Interior, the average length of detention is 38 days (AIDA 2015, p.79).

Freedom from inhuman treatment

The Office of the national Ombudsman for the rights of detained persons and persons deprived of their liberty (*Garante Nazionale per i detenuti*) was established by the Italian Government in compliance with the Optional Protocol to the UN Convention Against Torture (OPCAT). The Ombudsman should have unrestricted access to any facility inside the immigration detention centres (AIDA 2015, p.91).

The security and surveillance system in Italy seems to be focussed on the prevention of the detainees escaping the centres or hurting the staff rather than the protection of their rights. MEDU has reported a state of tension, malaise and psychological discomfort among the detainees; sometimes worsen by a restriction of the immigrant’ freedom of movement isolating permanently the different facilities sectors. MEDU assures that the most frequently heard sentence during their interviews to detainees is “this is worse than a prison”. These harsh living conditions has lead to frequent acts of self-harming and “continuing protests, revolts and attempts at mass escape” (Barbieri et al. 2013, p.22).

4.3. Sweden

Oversight

With regard to the institutional transparency, a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the detention centres of Mårsta and Gävle in 2009 and was met with “excellent level of co-operation” from the national authorities and the staff. They enjoyed “access to all the necessary documentation” as well as “immediate access to the places visited (including ones not notified in advance) and was able to speak in private with persons deprived of their liberty” (Council of Europe 2009, p.3).

The detainees are informed concerning their rights as soon as they arrive to the detention centres in a language understandable for them. These including their right to contact their family members and employer, as well as their embassy or consulate or an international humans rights organization (Migrationsverket 2015, p.19). The authorities argue that “contact with the outside world, and the possibility to meet their families and friends, is very important in their situation” (Migrationsverket 2015, p.14). The CPT’s delegation confirmed the “satisfactory possibility for contact with the outside world” (Council of Europe 2009, p.6). The detainees have free national calls and two free international calls during their stay.

Each detainee can receive a maximum of three visitors at the same time and a maximum of two of them can be men. Visitors may not be body searched. The room allocated for family and friends’ visits are designed to give privacy. However, they may be supervised for security reasons, although this rarely happens and this decision may be appealed.

NGOs and religious representatives visit and are granted wide access to the different units of detention centres. Their representatives have to be registered as visitors, report when they intend to visit and be able to show identification (Migrationsverket 2015, p.16). Raul Sokol, executive officer and team leader at the Detention Centre in Mårsta, explains that the authorities have meetings with the NGOs every three months and actually “a lot of the changes we have done for better were suggestions of these groups”.

Judicial protection and legal assistance

The detainees have the right to free legal assistance from a lawyer and they can contact this person by telephone for free. Regarding to the confidentiality, “visits from the detainee’s legal counsel may never be supervised, unless it is requests by the detainee” (Migrationsverket 2015, p.16). Furthermore, the detainees receive enclosed information regarding new order of authority and process or Courts; asylum regulations in Sweden; impediments of enforcement; appeal procedure; The Dublin Regulation; the Migration Board’s rejection of an asylum application; immediate enforcement; rejection of the Migration Court or the Migration Court of Appeal, etc. (Migrationsverket 2015, p.29).

There exists automatic judicial review in Sweden. When an immigrant in an irregular administrative situation is detained, the detention order shall be re-examined every two months. Each re-examination shall be preceded by an oral hearing. Furthermore, “a detention [...] order that is not re-examined within the prescribed period expires” (Ministry for Foreign Affairs 2005, p.33).

The Swedish Migration Board is responsible of deciding about detention. This decision may be appealed “without consideration to time limitation” to the Migration Court, the decision of which may be appealed further to the Migration Court of Appeal (Migrationsverket 2015, p.21). Both judicial authorities have expertise in immigration. If the detainee is to be expelled, he or she has the right to a public council, which is independent of the Migration Board and other authorities (Migrationsverket 2015, p.23).

Adequate standard of living

The CPT’s delegation reported that the material conditions of the centres visited in Sweden were of “a very high standard” and that the detainees “enjoyed a considerable degree of freedom within the centres, had access to a range of activities” (Council of Europe 2009, p.6).

In the Detention Centre of Märsta, the biggest and most important in Sweden, the detainees can move freely inside the unit. The men’s unit have rooms with mostly two beds, but they can also have one or three beds. There are bathrooms and toilets, a

washing room, two dinning rooms, smoking outdoor space, a two-floors gym, two open areas, a room with computers and 24 hours Internet connection, a library, a meditation and religious room and several common areas with sofas and televisions.

The food, which is catered, is served four times a day. The menu varies every day, it is nutritional and adapted to vegetarians, people with allergies or other medical problems and people from different cultures (no pork is served) (Migrationsverket 2015, p.15).

In regards to the healthcare, the detainees have the right to access to emergency medical treatment and other services such as psychological assistance, dental care or infectious diseases treatment. If needed, the detainee would be attended in a hospital. A doctor visits once and a nurse twice a week in the Nurse Room at the detention centre of Märsta (Migrationsverket 2015, p.16). It is worth knowing that the CPT's delegation found "evidence that medical records were made freely available to non-medical staff; this is entirely unacceptable" (Council of Europe 2009, p.7). Regarding to the hygiene, the detention centres supply razors, shaving cream, shampoo, toothbrush, toothpaste, comb and soap.

There are several leisure and physical activities offered to the detainees to fill their free time in Märsta, for instance painting, billiard, table tennis, qi-gong and relaxation sessions, education (such as lectures in English) or access to the gym, library and computers' room. The detainees also have the possibility to do outdoors activities three hours per day. This is the minimum dictated by the law, but during summers sometimes there is the possibility to extend this period. In the exercise yard, the detainees have access to equipment for sports such as football, basketball or badminton. There are sometimes BBQs in the summertime. These activities are led by the centre's staff together with the NGOs if possible (Migrationsverket 2015, p.15).

When a detainee threatens to harm him or herself, other detainees or the staff, there might be restrictions concerning the freedom of movement. "The alien can be held separate from the others or be placed at the Remand Centre" (Migrationsverket 2015, p.17). The detainees held in the Remand Centre are visited by the staff once a week, to consider whether the person is able to return to the detention centre.

In 1997 the immigration administrative detention responsibility was transferred from the Police Department to the Swedish Migration Board (Migrationsverket 2015, p.4).

The staff is completely formed by case officers who have an adequate academic background and relevant work experience; they are in continuous theoretical and practical training too. No police officers are in contact with the detainees, but only social workers. They follow a Code of Ethics which stresses the importance of openness, predictability and relevant information for the detainees. They also must “be treated in a friendly and respectful manner” (Migrationsverket 2015, p.7). The staff in Mårsta Detention Centre masters 37 different languages, which helps to overcome communication barriers with the detainees.

While the maximum length of detention in Sweden is two months - which can be extended to 12 months -, the average were 11,2 days in 2012 (Migrationsverket 2015, p.25). It is worth knowing that the detainees have the right to a daily allowance of 24 SEK (2,5 euro approx.).

Freedom from inhuman treatment

The CTP’s delegation did not report any allegations of ill-treatment of detainees by staff in 2009. “Many detainees interviewed spoke positively about the staff, and the delegation observed that staff-detainee relations were generally relaxed” (Council of Europe 2009, p.6). In fact, the method used by the staff is called the autogenic perspective and consists in create mental wellbeing making the detainees situation “comprehensible, manageable and meaningful” (Migrationsverket 2015, p.8). It is a conversational method which also focus on cooperation, early detection of problems, consideration of others cultural, religious or national differences and creation of a good atmosphere.

The physical and technical security system in the Swedish centres does not include any human resources. If needed, the police can be contacted by the staff, which is equipped with radios. The staff does not wear a uniform since they “want to have a distinction between the Remain centres and the Detention centres” and therefore they “do not have guns or other things used in other institutions that punish” states Sokol.

Another important part of the system is the dynamic security, which is based on a constructive behaviour management thanks to the good relationship between the staff

and the detainees (Migrationsverket 2015, p.13). For instance, there exist weekly meeting in Märsta which “are a forum for the detainees to express complaints, ask questions, make suggestions, be informed of various issues” (Migrationsverket 2015, p.15).

	Oversight	Judicial protection and legal assistance	Adequate standard of living	Freedom from inhuman treatment
Spain	Limited	Limited	Not granted	Limited
Italy	Limited	Limited	Not granted	Limited
Sweden	Granted	Granted	Granted	Granted

5. Conclusions

This paper has analysed the state of human rights protection within immigration detention centres comparing three European countries: Spain, Italy and Sweden.

Firstly, the research concludes that the differences concerning immigration detention conditions among Spain, Italy and Sweden lead to a distinctive model for each country. Thus, each model implies a different grade of protection of the detainees’ rights within detention centres. Whilst the Italian and Spanish models could be considered as rather police or penitentiary models, featured by coercive methods, the Swedish model could be seen as a social model, focussed on making the immigrants’ stay in the detention facilities as dignified as possible.

Secondly, observing the national legal framework for each state, there exists, at first glance, a modest gap regarding human rights protection within immigration detention centres between Sweden and the two Mediterranean countries studied. Nonetheless, this breach increases when the detention conditions *de facto* are investigated. While the Swedish centres are ruled according to the country’s law, in Spain and Italy the

detention conditions do not frequently meet what is stated by their own national legislation.

Thirdly, the right to oversight, the right to judicial protection and legal assistance, as well as the freedom from inhuman treatment appear to be granted in Sweden. While Italy and Spain ensure these rights *de jure*, some limitations to protect them in practice have been observed in these models of detention. Furthermore, immigrants detained in Swedish centres hold the right to an adequate standard of living by law and in reality. On the other hand, even though according to the law this right shall be protected in Spain and Italy, in practice detainees do not have a decent standard of living ensured within their detention facilities.

Consequently, it can be discussed that the Spanish and Italian detention systems should be enhanced using Sweden as a role model. Two effective improvements could be contemplated for this reason. First, it is important taking some steps to move from a penitentiary model to a detention system based on the social needs of the detainees. This modification could be reached by changing the type of entity managing the centres, as well as the staff working there. The professionals are to be social workers and their background should be relevant to issues related to immigration, refugee status and human rights.

Moreover, if the detention conditions were to comply with the law, Spain and Italy would consequently provide a higher level of human rights protection for the immigrants detained. Also, in consequence, transparency and accountability would probably experience a development in such models, as it is the case of Sweden.

Finally, it is important to take into account the existence of a wide investigation made by organisations concerned about migrants' rights regarding detention centres in Italy and Spain. This interest for research is, in fact, consequence of the criticism that these models have received lately. On the contrary, investigation regarding immigration detention in Sweden is not extensive, apparently because the situation has not generated preoccupation among the public opinion. Nevertheless, a larger investigation about the Swedish system, especially when it comes to comparative analysis, might be a useful tool to provide other states with an exemplary model to follow in their path to strengthen the protection of detainees' human rights.

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