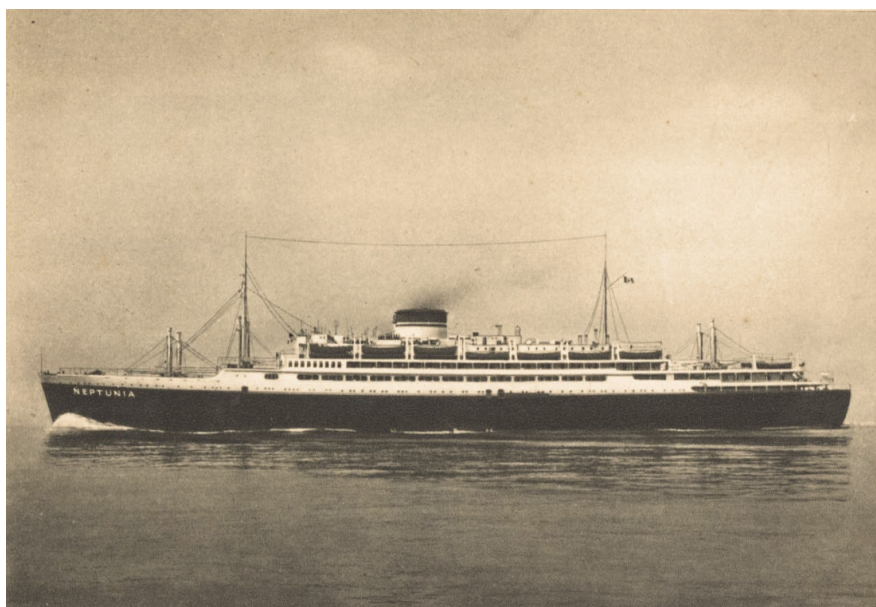


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NEW MIGRANT DETENTION STRATEGIES IN SPAIN: SHORT-TERM ASSISTANCE CENTRES AND INTERNMENT CENTRES FOR FOREIGN NATIONALS

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I. - INTRODUCTION. II.-SHORT-TERM ASSISTANCE CENTRES FOR FOREIGN NATIONALS (CATES). III.- THE CIES AFTER THE CATES. MORE EFFICIENT? IV.- THE ROUTE FOLLOWING DETENTION: THE CAEDS. V.- CONCLUSIONS

ABSTRACT: Under Pedro Sánchez leadership, the Spanish Government has modified migration management in Spain, essentially in relation to arrival and reception, through the creation of new institutions for the detention of recently arrived migrants. Termed Short-Term Assistance Centres for Foreign Nationals, these new facilities have prompted a change in the role of Internment Centres for Foreign Nationals.

Here, it shall be analysed the concept, creation, conditions and (non-existent) regulatory framework of these Assistance Centres and their function as regards managing migrant arrivals. I shall also explore the concomitant change in the role played by Internment Centres in migration management in Spain over the past year.

KEYWORDS: Detention centres, migration, CATEs, CIEs, arrivals.

NUEVAS ESTRATEGIAS EN LA DETENCIÓN DE MIGRANTES EN ESPAÑA: LOS CENTROS DE ATENCIÓN TEMPORAL DE EXTRANJEROS (CATE) Y LOS CENTROS DE INTERNAMIENTO DE EXTRANJEROS (CIE)

RESUMEN: El Gobierno de Pedro Sánchez ha modificado la gestión de las migraciones, esencialmente en lo relativo a la llegada y la primera acogida, a través de la creación de nuevas instituciones para la detención de los migrantes recién llegados. En concreto, se ha desarrollado la figura de los Centros de Atención Temporal de Extranjeros (CATE) que ha propiciado una modificación en el rol de los Centros de Internamiento de Extranjeros (CIE).

En este trabajo se analiza la creación de los CATE, su concepto, sus condiciones, su -inexistente- regulación, así como su función en el entramado de la gestión de las llegadas de migrantes y su relación con el cambio del papel que han jugado los CIE en el último año dentro de la gestión migratoria española.

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PALABRAS CLAVE: Centros de detención, migración, Centros de Atención Temporal de Extranjeros (CATE), Centros de Internamiento de Extranjeros (CIE), llegadas.

NOUVELLES STRATÉGIES EN MATIÈRE DE DÉTENTION DES MIGRANTS EN ESPAGNE: LES CENTRES TEMPORAIRES ET LES CENTRES D'INTERNEMENT D'ÉTRANGERS

RESUMÉ: Le gouvernement de Pedro Sánchez a modifié la gestion de la migration, essentiellement en ce qui concerne l'arrivée et le premier accueil, à travers la création de nouvelles institutions pour la détention des migrants nouvellement arrivés. Plus précisément, il a développé le concept des centres temporaires d'étrangers (CATE) qui a entraîné une modification du rôle des centres d'internement d'étrangers.

Cet article analyse la création des CATE ; le concept, les conditions, le vide juridique, ainsi que le rôle de ces centres dans le réseau de la gestion des arrivées de migrants et leur relation avec le changement du rôle joué par les CIE au cours de la dernière année.

MOT CLÉ: Centres de détention, migrations, CATEs, CIEs, arrivées

I. INTRODUCTION

Since Pedro Sánchez became president of the Spanish Government, some of the basic strands of Spanish immigration policy have changed, especially as regards the arrival of migrants from Africa. The stated aim has been to reduce these arrivals³, and to this end, the Government has intensified relations with Morocco and has modified migration control and sea rescue systems by creating a single authority and restricting Spain's maritime space for action, rendering Moroccan services responsible for sea rescue.

The handling of migrant arrivals in the Spanish territory has also been changed through the creation of Short-Term Assistance Centres for Foreign Nationals (*Centros de Atención Temporal de Extranjeros*, Spanish initials: CATEs) to manage irregular migrants arriving in small boats from North Africa. This in turn has changed the role of Internment Centres for Foreign Nationals (*Centros de Internamiento de Extranjeros*, Spanish initials: CIEs), which official figures show were responsible in 2018 for the highest percentages of repatriations and the lowest percentage of sub-Saharan internees in recent years.

Here, it shall be addressed questions related to the creation of the various CATEs along the Spanish coast, their conditions and their function within the immigration system. Subsequently, I shall analyse how this function has influenced the operation of the CIEs, leading to the highest rate in historical

³ "El Gobierno traza un plan para reducir un 50% la migración irregular" [The Government outlines a plan to reduce irregular migration by 50%], *El País*, 30th January, 2019.

records of deportations from these latter. It shall be also considered other related questions such as the creation of Assistance, Emergency and Referral Centres (*Centros de Atención de Emergencia y Derivación*, Spanish initials: CAED).

II. SHORT-TERM ASSISTANCE CENTRES FOR FOREIGN NATIONALS (CATEs)

1. ORIGIN OF THE CATEs

The origin of the Short-Term Assistance Centres for Foreign Nationals within the Spanish system is obscure that there is no consensus about when they were first introduced. The term was first used in relation to a facility located in the port of Motril. The official name at the time was the “Motril Centre for Initial Assistance and Detention of Foreign Nationals” (*Centro de Primera Asistencia y Detención de Extranjeros de Motril*), as noted by the Ombudsman on his visit in November 2017⁴. However, following the Ombudsman’s recommendation that the centre be closed, it began to be referred to as the Short-Term Assistance Centre, although this cannot be considered the official name.

The term CATE became widely used in official language⁵ following the inauguration of the *Crinavis* centre in the port of Algeciras. It was in the opening of this centre, with a capacity for 450 people, that the notion of the CATE entered public debate, and the need to explain the meaning and function of this institution was even raised in parliament⁶.

However, in retroactive application, some government representatives have referred to detention facilities in the ports of Almeria and Motril for recently arrived migrants as CATEs, when they were not previously designated as such. In fact, as we shall see, both centres were remodelled to resemble the *Crinavis* centre and align more closely with the concept of a CATE.

⁴ <<https://www.defensordelpueblo.es/evento-mnp/centro-primera-asistencia-detencion-extranjeros-motril-granada/>>. All links were last accessed on the 15th of September, 2019.

⁵ Neither the term CATE nor the term “Short-Term Assistance Centre for Foreign Nationals” appeared in the Official State Gazette or in the Official Transcript of Parliamentary Proceedings (*Diario de Sesiones del Congreso de los Diputados o el Senado*) before the inauguration of the *Crinavis* centre in San Roque.

⁶ The term CATE was first used in the Congress of Deputies on the 29th of August, 2018, in an address by the Minister of the Interior, Fernando Grande-Marlaska. Vid. *Diario de Sesiones del Congreso de los Diputados*, 2018, No. 577, pp. 5 and ss.

The confusion is such that in response to a parliamentary question from member of parliament Jon Iñarritu, the Government itself reported that the Motril and Almeria CATEs had been in operation since 2017⁷. However, this term does not appear in any public document until well into 2018 in the case of Motril and only after August 2018 in the case of Almeria.

2. CONCEPT, CONDITIONS AND REGULATORY FRAMEWORK OF THE CATEs

The foregoing invites reflection on the reasons behind this confusion, which might even be considered misrepresentation. There are several possibilities, but it could well be politically motivated, in response to the legal argument that there is no regulatory framework whatsoever for the CATEs. This institution was introduced in practice without any type of regulatory legislation. References to the existence of CATEs prior to May 2018, the date when Pedro Sánchez came into office, blur the responsibility for their lack of a regulation, attributing it to previous governments that put such centres into operation. However, this view is not factually correct. In fact, in an appearance before the Senate Committee of the Interior, the Minister of the Interior himself reproached the People's Party (*Partido Popular*) for not having launched the CATEs in Almeria and Motril⁸.

The lack of a regulatory framework hinders definition of this type of centre. In principle, it can be concluded that the CATEs do not form part of the network of migration centres referred to in articles 264 and subsequent of Royal Decree 557/2011, of 20 April, approving the Regulation of Organic Law 4/2000, on the rights and freedoms of foreign nationals in Spain and their social integration, as amended by Organic Law 2/2009. This is for two reasons. First, because article 264 of RD 557/2011 establishes that this network exists for “the purposes of social integration”, and second because article 265 stipulates that a Ministerial Order is required to establish these centres, and as has been indicated, no such order exists for the CATEs.

Due to the absence of specific legislation, a definition of the CATEs must therefore be sought from other sources. One such source is the definition given by the Minister of the Interior, Grande-Marlaska, in his appearance before the Committee of the Interior on the 29th of August, 2018. In

⁷ Response of the 26th of July, 2019, to parliamentary question 184/481, of the 21st of June, 2019, from member of parliament Jon Iñarritu García.

⁸ Diario de Sesiones del Senado of the 2nd of October, 2018, no. 327, p. 40.

response to an intervention by the spokesperson for the political party *Unidas Podemos*, the Minister stated that “it is a police station, but one that provides many of the services they need, including interpreters, health care for those not in need of hospitalisation, the UNHCR, CEAR, and the police. That is a CATE. People never stay there for more than the seventy-two hours stipulated; it is not a CIE”⁹.

To the Minister’s words can be added the definition given in the Resolution of the Secretary of State for Security, referring to the urgent need to process the paperwork necessary to inaugurate the CATE (not designated as such in the resolution) known as *Crinavis*¹⁰. This resolution states that “The intended purpose of these facilities is to conduct initial identification procedures and background checks, with a maximum stay of 72 hours, for subsequent referral to CIEs or NGOs”.

Both definitions invite several conclusions, the first of which is that a CATE is an extension of a police station. In other words, CATEs are large outdoor prisons in which people are detained, and although people recently arrived in Spain are held there for a maximum period of 72 hours, such detention centres lack a specific regulatory framework. Furthermore, as we shall see, they do not comply with Directive 11/2015, of the Secretary of State for Security, approving the “Technical Directive for the design and construction of detention areas”.

In sum, CATEs are facilities in the vicinity of certain ports on the south coast of Spain that have been equipped by the Government for the detention of recently arrived migrants. They are, therefore, detention centres managed by the police. As stated by the Minister, Grande-Marlaska, they must provide a series of specific services required by the circumstances of the detainees, such as interpreters, legal assistance, health care and advice on issues related to international protection. However, their fundamental role as instruments of law enforcement eclipses the provision of such services.

⁹ Diario de Sesiones del Congreso de los Diputados, 2018, No. 577, cit., p. 30.

¹⁰ Resolution of the 23rd of July, 2018, of the Secretary of State for Security, declaring the urgent need to process contracts for accommodation, sustenance, cleaning and other needs arising from the unexpected and massive arrival on Spanish shores of boats carrying immigrants, especially in the far south (Almería, Granada, Málaga and Cadiz and Huelva).

3. CONDITIONS IN THE CATEs ON THE SOUTHERN COAST

At present, there are four CATEs in Andalusia: San Roque-Algeciras (Cádiz), Motril (Granada), Almería and Málaga. Their creation marks the failure of the previous system. The 2017 annual report of the National Mechanism for the Prevention of Torture contained harsh criticisms following visits to the detention centres established on the Spanish coast, mainly located in ports. The report claimed that the port facilities were not being used for purposes of initial assistance¹¹ and recommended the creation of suitable infrastructures, the provision of specialist human resources staff and the application of criteria for collaboration and coordination between the authorities, international organisations and civil society. In addition, it demanded that the facilities be equipped to accommodate detainees in a dignified manner for as short a time as possible¹².

The creation of CATEs as places of detention for recently arrived migrants was proposed as an instrument to rectify the shortcomings condemned in the report of the National Mechanism for the Prevention of Torture. Nonetheless, the question arises as to whether the requirements outlined in this report have been met.

The inauguration of these facilities began with the CATE in San Roque, known as *Crinavis*, which opened on the 2nd of August, 2018, and received more than 2,500 people in its first six weeks of operation¹³. Installed by the Military Emergency Unit, this CATE can accommodate up to 450 people, thus exceeding the estimated capacity for 350 people envisaged by the Secretary of State for Security¹⁴.

The stated purpose of these facilities is to provide a more dignified and humanitarian reception to recent arrivals, although it should not be forgotten that they are also detention centres. In this respect, it should also be borne in

¹¹ 2017 Annual Report of the National Mechanism for the Prevention of Torture, available at <https://www.defensordelpueblo.es/wp-content/uploads/2018/07/Informe_2017_MNP.pdf>, p. 77

¹² *Ibid.*, p. 91

¹³ “El CATE atiende a 2.563 inmigrantes desde su apertura en San Roque” [The CATE has assisted 2,563 immigrants since it was opened in San Roque], *Andalucía Información*, 20th of September, 2018, available at <https://andaluciainformacion.es/campo-de-gibraltar/776653/el-cate-atiende-a-2563-inmigrantes-desde-su-apertura-en-san-roque/>.

¹⁴ Resolution of the 23rd of July, 2018, of the Secretary of State for Security, cit.

mind that previously, the increased arrival of people by sea in the province of Cadiz had led to the opening of sports facilities unsuitable for their detention, such as leisure centres. However, although the present situation is an improvement on the conditions that prevailed in police stations and leisure centres, the resources provided remain inadequate.

Barely a month after the San Roque CATE opened, the Police Union called for real, feasible solutions that involved annual planning and organisation, the creation of more immigrant reception centres and better health and hygiene resources. The Union indicated that healthcare staff and resources at the *Crinavis* CATE were insufficient and condemned the lack of an interpreter for nocturnal arrivals, despite the fact that immigrants were frequently admitted at night¹⁵. As a result of this lack of staff, police officers had been obliged to provide health care for newly arrived immigrants without being equipped or trained to do so. This was despite the Government's announcement months previously that they would have a 24 hour healthcare service¹⁶.

For months, *Crinavis* not only received people arriving on the Cadiz coast, but also those arriving by boat in Malaga, who were redirected to San Roque. Consequently, in just five months in 2018, this centre received 9,860 people¹⁷.

In parallel with the opening of the *Crinavis* centre, the Motril facility was remodelled. Initially called the Centre for Initial Assistance and Detention of Foreign Nationals, this latter had begun to be termed the Short-Term Assistance Centre, albeit unofficially, following a visit by the National Mechanism for the Prevention of Torture in 2017, which prompted a recommendation

¹⁵ "SUP lamenta los casos de sarna en el Centro de Atención Temporal de Extranjeros de San Roque" [The Police Union decries cases of scabies in the San Roque Short-Term Assistance Centre for Foreign Nationals], *Europa Press*, 5th of September, 2018, available at <<https://www.europapress.es/andalucia/cadiz-00351/noticia-sup-lamenta-casos-sarna-deficiencias-higienicas-cate-san-roque-cadiz-20180905153719.html>>.

¹⁶ "El Centro de Atención Temporal de Extranjeros (CATE) de Algeciras ya está en funcionamiento" [The Short-Term Assistance Centre for Foreign Nationals (CATE) opens in Algeciras], *The Huffington Post*, 5th of August, 2018, available at <https://www.huffingtonpost.es/2018/08/05/el-centro-de-atencion-temporal-de-extranjeros-cate-de-algeciras-ya-esta-en-funcionamiento_a_23496336/>.

¹⁷ Response to parliamentary question 184/481 of the 26th of July, 2019, formulated by member of parliament Jon iñarritu on the 21st of June, 2019.

for its closure due to unhealthy conditions and the need to construct new facilities¹⁸.

The Motril centre's 80-person capacity had proved insufficient, and on numerous occasions, recent arrivals were detained in places such as the municipal sports hall or even in a cultural centre. As a result, Mariano Rajoy's Government approved the modification of this facility. However, it was not until August 2018, after the San Roque CATE had opened, that the Motril centre underwent remodelling, again with the help of the Military Emergency Unit. The Motril CATE had a capacity for 250 people housed in tents, which had to be replaced by cell blocks due to severe flooding. Nonetheless, the building previously used for this purpose remained in operation¹⁹.

Conditions at the new facility also presented severe deficiencies. For example, the College of Lawyers in Granada warned of the disgraceful conditions in which immigrants received legal aid, due to the serious lack of material and human resources at the centre. Furthermore, in December 2018, the Ombudsman demanded the immediate closure of this centre. According to the report, it lacked adequate protection mechanisms and many of the detainees had to sleep on mats on the floor, in breach of Directive 11/2015 of the Secretary of State for Security. In addition, the Police Union warned that the centre continued to present serious shortcomings that put the detainees at risk.

To address these concerns, construction began in July 2019 on new centre in a restricted access zone in the port of Motril. This new CATE will have a capacity for 200 people in an area measuring 2,000 square metres. However, there is still no information as to whether this new centre will be the definitive one or merely a transitional facility pending completion of works on the initial centre²⁰.

¹⁸ 2017 Annual Report of the National Mechanism for the Prevention of Torture, cit., p. 78.

¹⁹ "Instalado el nuevo CATE de Motril (Granada) con 250 plazas para atender a inmigrantes" [New CATE opened at Motril (Granada), with a capacity for 250 immigrants], *Europa Press*, 26th of August, 2018, available at <<https://www.europapress.es/andalucia/noticia-ya-operativo-nuevo-cate-motril-granada-250-plazas-atender-inmigrantes-20180826105424.html>>.

²⁰ "Nuevo CATE de Motril cerca del final" [New CATE in Motril close to completion], *Granada Hoy*, 5th of September, 2019, <https://www.granadahoy.com/provincia/nuevo-CATE-Motril-cerca-final_0_1388561605.html>.

With regard to the reception area in Almeria, the visit in 2017 of the National Mechanism for the Prevention of Torture revealed that the previous facility was not equipped with the minimum basic services necessary for a 72-hour period of detention. It was found that detainees slept on mattresses on the floor in unheated rooms, a source of concern given the centre's proximity to the sea²¹. In July 2019, the CATE was expanded with new blocks specifically intended to accommodate women and children²². There is no information on the exact capacity of this CATE or on its dimensions.

Lastly, in July 2019, a new CATE was opened in Malaga with a capacity for 300 people. When the centre received its first intake of 130 people, including 22 children, in August 2019, its deficiencies immediately became apparent: it did not have a separate block for women and children.

Furthermore, the CATE in Malaga was found to be in breach of Directive 11/2015 as regards detention centre conditions because it only allocated 2.3 square metres per person within the facility, which is 1.7 square metres less than the stipulated minimum in a cell, in accordance with the directive.

The Spanish Ministry of the Interior's response underlines the confusion surrounding these institutions: the Ministry claimed that CATEs cannot be considered detention centres and are therefore exempt from the measures required by Directive 11/2015²³.

4. THE FUNCTION OF THE CATEs WITHIN THE IMMIGRATION SYSTEM

The Government has provided figures on the operation of the CATEs in 2017 (retroactively applying the designation of CATE to facilities in place prior to their definition as such, contrary to the parliamentary statements of

²¹ 2017 Annual Report of the National Mechanism for the Prevention of Torture, cit., p. 78-79.

²² "El Centro de Acogida de Extranjeros del puerto de Almería se amplía con tres módulos, uno para mujeres y niños" [The Reception Centre for Foreign Nationals at the port of Almeria adds three blocks, one for women and children], *Europa Press*, 16th of July, 2019, available at <<https://www.europapress.es/andalucia/almeria-00350/noticia-centro-acogida-extranjeros-puerto-almeria-amplia-tres-modulos-mujeres-ninos-20190716142547.html>>.

²³ "El nuevo centro de migrantes del puerto de Málaga dedica 2,3 m² por persona, la mitad que un calabozo para detenidos" [The new centre for migrants at the port of Malaga allocates 2.3 m² per person, half that of a prison cell for people who have been arrested], *eldiario.es*, 28th of July, 2019, available at <https://www.eldiario.es/desalambre/Gobierno-destinara-calabozos-Malaga-retenidos_0_922158093.html>.

the minister himself), 2018 and early 2019²⁴. These data evidence the high turnover in the CATEs in recent months. Thus, the San Roque centre, which opened in August 2018 with a declared capacity of about 450 people, received 9,860 people in the last five months of 2018. This figure subsequently fell, with only 1,970 people received between January and July 2019 at San Roque centre. Meanwhile, 3,868 recently arrived migrants by sea were detained in the Motril centre in 2017, 8,685 in 2018 and 1,831 from January to July 2019. Similarly, 5,567 recently arrived migrants by sea were detained in the Almeria centre in 2017, 12,254 in 2018 and 2,746 from January to July 2019. Since the official data show that a total of 10,475 people arrived by sea on Spanish shores in the first six months of 2019²⁵, the foregoing figures indicate that over 60% of those who arrived in Spain by sea were detained in a CATE.

The CATEs serve primarily as a place of detention for recently arrived migrants. For all that their name conceals their purpose, and despite the Government's attempts to deny their function as detention centres, referring to them instead as reception centres and even humanitarian aid centres²⁶, the fact is that they are detention centres for people who at best have just crossed the Mediterranean in appalling conditions, and at worst, have survived a shipwreck.

The preponderance of security criteria, in which detention and law enforcement prevail over humanitarian aid or psychological and human questions,

²⁴ Response of the 26th of July, 2019, to a parliamentary question from member of parliament Jon Iñarritu García, cit.

²⁵ Ministry of the Interior data reported by Europa Press in "Descienden un 40% las llegadas de migrantes en patera a España en lo que va de 2019" [Migrant arrivals by sea in Spain fall by 40% in 2019], of the 2nd of August, 2019, available at <<https://www.europapress.es/epsocial/migracion/noticia-descienden-40-llegadas-migrantes-patera-espana-va-2019-20190801191957.html>>.

²⁶ For example, the Government Delegate in Andalusia, Javier Gómez de Celis, made a striking statement in relation to the CATEs when he claimed that they are mechanisms of the "system through which humanitarian aid is given to people who have just reached dry land, many of whom are in a terrible state of hypothermia, women who in some cases have been raped, pregnant women, children and people with some kind of illness". Vid.: "Celis: "Ni en Motril ni en ningún otro lugar de Andalucía hay previsión de abrir ningún CIE" [There are no plans to open a CIE in Motril or anywhere else in Andalusia], Europa Press, 8th of October, 2018, available at <<https://www.europapress.es/andalucia/noticia-gomez-celis-asegura-motril-ningun-otro-lugar-andalucia-hay-prevision-apertura-ningun-cie-20181008150522.html>>.

renders these centres as the visualization of the Spanish immigration system. It should also be noted that despite improvements to the conditions in which recently arrived migrants by sea are housed in the CATEs, these remain inadequate. The presence of NGOs such as the Red Cross, CEAR or international institutions such as the UNHCR is insufficient to ensure compliance with minimum standards in these centres. Furthermore, their lack of a specific regulatory framework renders it difficult to monitor the centres or guarantee suitable protocols and procedures to protect the most vulnerable.

Notwithstanding the (insufficient) improvements in the conditions of detention of recently arrived immigrants, the distribution of the CATEs reflects a strategy to increase system efficiency similar to the hotspots designed to respond to the refugee crisis in 2015. The CATEs are not strictly intended to identify between economic migrants and refugees but rather, and more simply, to identify between migrants who may be subject to repatriation procedures and those who are not.

In this regard, the introduction of the CATEs, together with other new entities not strictly involved in detention such as the Assistance, Emergency and Referral Centres (Spanish initials: CAED), which will be discussed below, has led to a two-pronged management approach. There is one system for people of sub-Saharan origin: they are the majority of those detained in the CATEs and, from the CATEs, they may be transferred to the CAEDs or released. However, there is a different system for migrants from countries in the Maghreb, essentially Morocco and Algeria. Given the greater ease with which these nationals can be returned to their countries of origin, they are rarely detained in the CATEs; instead, most are sent to police stations, from where they are directly returned or interned in a CIE for subsequent return or deportation. This approach is confirmed by an analysis of the latest data on CIE operations for the year 2018.

5. THE CIEs AFTER THE CATEs. MORE EFFICIENT?

As a result of the confusion arising from the lack of clarity as regards the CATEs, in certain situations they have been equated with the CIEs. Through various spokespersons, the Government has striven to deny this equivalence by indicating the differences. Evidently, differences do exist, as has been highlighted above. For example, the CATEs are intended for the initial detention of recently arrived migrants by sea whereas the CIEs fulfil a different

function, that of interning people for a longer period of up to 60 days in order to execute the expulsion of migrants subject to a deportation or return procedure.

This latter function is one of the requirements established by the Constitutional Court in its judgement 115/1987 in order for the internment of foreign nationals to comply with the constitutional framework. The other two requirements were that internment must be decided individually by the competent judge after analysing the circumstances of each case and must be carried out in non-penal centres specifically intended for this purpose.

Among the various criticisms that have been directed against the CIEs²⁷, some of the most forceful have been related to non-compliance with the first requirement, i.e. the purpose of internment for deportation. In effect, according to the published data, only 29% of the people interned in CIEs in 2016 were deported and only 37% in 2017. Furthermore, these figures are even lower for CIEs in areas near the borders with Africa (Algeciras and the Canary Islands), where deportations in 2017 did not exceed 15% of the people interned²⁸.

However, this inclusion of CATEs in the system for managing irregular arrival of migrants, and therefore in the deportation process, has significantly influenced the operation of the CIEs, leading to an increase in the rate of returns. As noted above, only 29% of the people interned in 2016 were deported and only 37% in 2017. However, in 2018 this percentage rose to 58%²⁹,

²⁷ VV.AA., *Razones para el cierre de los CIE: del reformismo a la abolición*, OCSPi, Málaga, 2017; MARTÍNEZ ESCAMILLA, M. (2016): “Centros de Internamiento para extranjeros: Estado de la cuestión y perspectivas de futuro”, in *Revista Electrónica de Ciencia Penal y Criminología*, no. 1 8-23, 1-38; BRANDARIZ GARCÍA, J.A., FERNÁNDEZ BESSA, C., “La Crimigración en el contexto español: el creciente protagonismo de lo punitivo en el control migratorio”, in LÓPEZ-SALA, A., GODENAU, D., (Coords.), *Estados de contención, estados de detención*, Anthropos, Barcelona, 2017, p. 119 and ss.

²⁸ BOZA MARTÍNEZ, D., “El internamiento de personas extranjeras: más allá de los límites de la privación de libertad”, in LÓPEZ-SALA, A., GODENAU, D., (Coords.), *Estados de contención, estados de detención*, *op. cit.*, p. 97 and ss.

²⁹ The data for 2016 and 2017 were obtained from the respective reports of the National Mechanism for the Prevention of Torture. Since the 2018 report of the National Mechanism for the Prevention of Torture had still not been published at the time of writing, the data for 2018 were taken from the 2018 report of the Jesuit Service for Migrants, *Discriminación de origen*, available at <<https://sjme.org/wp-content/uploads/2019/06/Informe-CIE-2018->

as shown in Figure 1. The total figures also evidence an increase, since 2,205 people were deported from CIEs in 2016 and 3,286 in 2017, whereas in 2018 the figure rose to 4,582.

Figure 1. Repatriations from the CIEs.



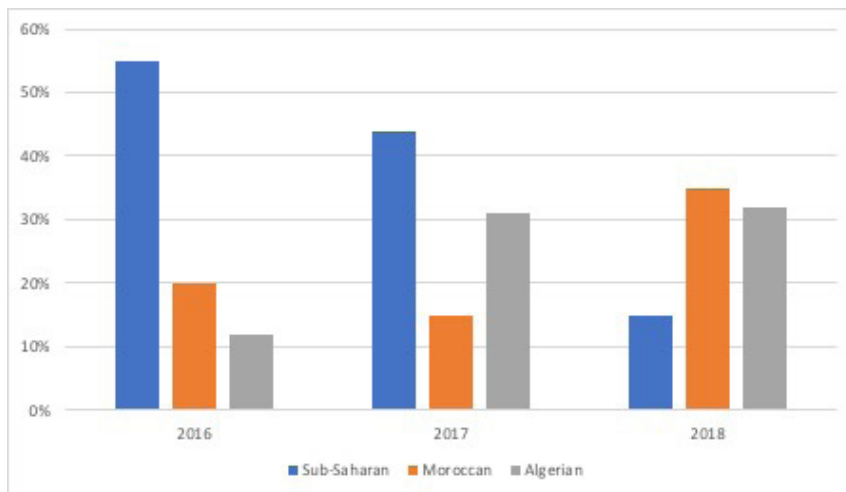
Compilation based on the reports of the National Mechanism for the Prevention of Torture and Jesuit Service for Migrants (see note 29)

These data should be viewed in conjunction with other relevant figures in relation to CIE operations in 2018 compared to previous periods. For example, the number of sub-Saharan people interned in CIEs fell dramatically last year while the number of North Africans rose, as illustrated in Figure 2.

Thus, in 2016, 55% of the people interned in CIEs were of sub-Saharan origin, 20% were Algerian and 12% Moroccan. In 2017, the majority of internees (44%) were again of sub-Saharan origin, compared with 31% who were Algerian and 18% who were Moroccan. This trend underwent a substantial change in 2018: internees of sub-Saharan origin fell to 15%, Moroccan internees rose to 35% and Algerian internees continued to account for 32%. In consequence, 67% of people interned in a CIE in 2018 came from one of the countries in the Maghreb.

In short, the inclusion of CATEs in the migration management system has led to an increase in the number of people from Morocco who are interned and an increase in internee repatriation rates. This has generated a *SJM.pdf*, which can be considered official because the data were obtained via requests for information on the Transparency Portal.

Figure 2. CIE internees by nationality.



Compilation based on the reports of the National Mechanism for the Prevention of Torture and Jesuit Service for Migrants (see note 29)

differential —one might say discriminatory— system which prioritises the repatriation of Moroccan nationals while opens new routes for sub-Saharan people. This has been achieved by means of a new institution, the CAEDs.

III. THE ROUTE FOLLOWING DETENTION: THE CAEDS

But also the creation of the CATEs that has added to the profusion of acronyms for centres involved in migration management; at the same time, the Sánchez Government approved the creation of another new institution, the Assistance, Emergency and Referral Centres (*Centros de Atención, Emergencia y Derivación*, Spanish initials: CAED). It should be noted that these centres were initially called Short-Term Reception and Assistance Centres (*Centros de Acogida y Atención Temporal*).

The first similarity between the CAEDs and the CATEs is their lack of any legal framework. Although these centres could be located within the scope of the network migration centres referred to in articles 264 and subsequent of RD 557/2011, they were created without the publication of any

Ministerial Order. While it appears that the seven CAEDs operating in Spain to date (September 2019) fulfil the purpose of “social integration” referred to in the above-mentioned precepts, there is no evidence of a regulatory framework for any of them.

The Government began to open these centres in the summer of 2018, the first being opened in Chiclana de la Frontera with the capacity for 500 people. Subsequently, others were opened in Merida, Granada, Guadix (province of Granada), Seville, Almeria and Malaga. In total, they have the capacity to accommodate around 1,500 people, and are run along predominantly humanitarian profile rather than security and law enforcement criteria. According to the response to a parliamentary question from member of parliament Carles Campuzano i Canadés³⁰, the CAEDs are specifically intended for emergency reception and are endowed with a permanent, structural system. The centres are intended to meet the basic needs of migrants after initial assessment in a CATE, for a maximum period of 15 days. During these two weeks, those in charge of the centres, usually the Red Cross, are responsible for helping them contact their family or social networks and for their transfer to accommodation provided via humanitarian aid. These centres were conceived as an alternative to the sports centres that had previously been used to accommodate arrivals on the south coast.

The Government’s definition suggests several conclusions. First, the CAEDs complement the CATEs in underpinning the previously mentioned two-pronged system. When people detained in the CATEs are released, they are transferred to the CAEDs for care and assessment. Therefore, the CAEDs represent an alternative to internment in the CIEs in those cases where repatriation is considered unlikely.

Another characteristic of the CAEDs is that they are run by NGOs, primarily but not exclusively by the Red Cross. However, outsourcing management to the third sector raises problems of transparency regarding admission protocols, care provision and departure criteria. This seems to be the most notable negative aspect. These centres play an essential role in managing the arrival of people of diverse origin and high vulnerability. Nonetheless, given the rights affected and the vulnerability of the people involved, this mechanism should be combined with other instruments available to the State in

³⁰ Response to parliamentary question 184/44383 of the 28th of February 2019, formulated by member of parliament Carles Campuzano i Canadés on the 18th of January 2019.

order to ensure satisfactory management of reception. Indeed, the proper course of action would be for reception to remain the responsibility of public institutions rather than subcontracted entities.

The necessary audit of this type of activity would be better conducted by purely public institutions, instead of outsourcing it to other entities. Given the importance of the task, the rights affected, the highly vulnerable situation of the people concerned and the use of public money, it would be advisable to devise mechanisms to determine the conditions of admission to these centres, how long people can stay in them, the services and care they receive and the criteria for departure from the centres. In this regard, it seems essential that organisations in defence of fundamental rights should be able to enter the facilities as observers.

Transparency in the structure, management and operation of the CATEs and CAEDs is imperative. Consequently, regulations should be approved that include monitoring their compliance in daily operations. Such agreements with NGOs or private institutions should prioritise transparency regarding the mechanisms of action and protection of people.

IV. CONCLUSIONS

The widespread implementation of CATEs as an instrument for migration management reflects a substantial change in Spanish policy on irregular immigration by sea. Over half of the people arriving in Spain by sea are detained in CATEs.

CATEs are detention centres, but don't fulfil the requirements established in current legislation. Perhaps the most serious consequence of this is that they lack any specific regulatory framework that would enable monitoring of compliance with the stipulated conditions for the detention of these people. Furthermore, a predominantly security and law enforcement approach prevails with respect to people who in most cases have just survived a traumatic experience.

In the first instance, it will be necessary to regulate the care procedures, legal assistance mechanisms, length and conditions of stay and other elements necessary to enable these centres to respect as far as possible the human rights of detainees and, most especially, of those in situations of vulnerability and extreme vulnerability.

The creation of these centres has enabled the Spanish Government to generate two differentiated management systems. One of these targets people of Maghreb origin, who are not usually taken to the CATEs but are instead detained at police stations for subsequent transfer to the CIEs, from where they can be deported with greater ease due to agreements between Spain and their respective countries of origin. The other targets people of sub-Saharan origin, for whom the rate of internment is lower: following detainment in the CATEs, other new mechanisms are brought into play. The alternative to internment in a CIE proposed by the Government for sub-Saharan migrants is reception in a CAED. This has enabled the Sánchez Government to improve the efficiency of the CIEs and increase their repatriation rates, with a reduction in sub-Saharan internees and an increase in those from the Maghreb.

In short, the CATEs represent a novel element in migration management that facilitates deportation. Their creation evidences significant deficiencies, such as unsatisfactory conditions and the lack of a regulatory framework or protocols. However, the goal was not to create a better system but rather one that facilitated discriminatory deportation of Maghreb over sub-Saharan migrants, and this has been successfully achieved through the CATEs.

REFERENCES

- BOZA MARTÍNEZ, D., “El internamiento de personas extranjeras: más allá de los límites de la privación de libertad”, en LÓPEZ-SALA, A., GODENAU, D., (Coords.), *Estados de contención, estados de detención*, Anthropos, Barcelona, 2017.
- BRANDARIZ GARCÍA, J.A., FERNÁNDEZ BESSA, C., “La Crimigración en el contexto español: el creciente protagonismo de lo punitivo en el control migratorio”, en LÓPEZ-SALA, A., GODENAU, D., (Coords.), *Estados de contención, estados de detención*, Anthropos, Barcelona, 2017.
- MARTÍNEZ ESCAMILLA, M., “Centros de Internamiento para extranjeros: Estado de la cuestión y perspectivas de futuro”, *Revista Electrónica de Ciencia Penal y Criminología*, 18-23, 2016.
- MECANISMO NACIONAL DE PREVENCIÓN DE LA TORTURA, Informe anual 2017, accesible en <https://www.defensordelpueblo.es/wp-content/uploads/2018/07/Informe_2017_MNP.pdf>.
- SERVICIO JESUITA A MIGRANTES, *Informe de 2018. Discriminación de origen*, SJM, 2018, accesible en <<https://sjme.org/wp-content/uploads/2019/06/Informe-CIE-2018-SJM.pdf>>.
- Vv.Aa., *Razones para el cierre de los CIE: del reformismo a la abolición*, OCSPI, Málaga, 2017.



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BIBLIOGRAPHIE CRITIQUE

DIAZ PERALTA, E., El matrimonio infantil y forzado en el Derecho Internacional. Un enfoque de género y derechos humanos, ed. Tirant Lo Blanch, Valencia, 2019. Par Marta REINA GRAU

OANTA, G. (Coord.), El Derecho del mar y las personas y grupos vulnerables, Bosch Editor, Barcelona, 2018. Par Annina BÜRGIN

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