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Fewer rights, greater suffering

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Every week for the past nine years a group of volunteers from the Migra Studium Foundation have visited the people being held at the Zona Franca CIE. The aim of these visits is to listen to them, support them, provide them with information about their situation, and facilitate their defence and access to justice system. They are also a springboard for advocacy, denunciation and awareness-raising work, particularly in relation to the violation of rights, as part of a network with other civil society platforms and organisations. Achieving improvements in the conditions under which people are held in the CIE and advocating for changes in immigration policy that would transform a currently hostile system are just two of the key elements. The ultimate goal is to close down the CIEs and foster a more welcoming, hospitable society. The impediments to making these visits - or even outright prohibition by the authorities - are also a way of raising awareness and continuing to denounce the existence of rights violations in the CIE. This is also what has been happening during the coronavirus pandemic.

Introduction

Migra Studium Foundation's team of visitors to the Zona Franca CIE have been keeping a close eye on the facility, as it has every year since 2012. The team bears witness to the enormous complexity and diversity of day to day life in the facility and offers support to detainees. 2020 has been a very different year in every sense. The challenges presented by the Covid-19 pandemic suddenly penetrated every aspect of daily life in our countries. The detention system, the deportation policy, and life within the centres have been no exception to being affected by the pandemic. Just as life outside the CIEs has been upturned by coronavirus, so the virus has entered the walls of the CIE, turning life inside it on its head.

The following pages describe the extent to which the onset of the Covid-19 pandemic has shaken the assumptions underpinning migration policy since the central government declared a state of emergency and imposed lockdown on 14 March 2020. One of the most notable effects of the pandemic was the deportation or release of the last few remaining detainees and the evacuation of the facility on 19 March. For a period of 200 days, there were no detainees at the CIE in Barcelona's Zona Franca. Since deportation was no longer an option, Spain's detention centres remained empty until the central government announced the reopening of the CIEs on 23 September.

What follows is a reflection on the events that took place in 2020 in relation to the detainment of migrants at the Zona Franca CIE. First, there was the task of visiting and supporting detainees during most of the first quarter of the year. This was no easy task in February and the beginning of March, long before the state of emergency was declared, but already aware of the alarming news of the extent of the pandemic in Italy and in the rest of Europe, and the number of countries closing borders with Spain continuing to grow. The detainees interned at that time knew this and the tension inside.

The CIE during those weeks was palpable, making it even more difficult for the Migra Studium team to provide effective support. Later, on 5 October, detention activities recommenced, and deportations or refoulements were also resumed. At that moment, however, the management of the CIE, with the complicity of judicial authorities, impeded the resumption of visits and support from Migra Studium, any other NGO, the Religious Care Service, and even the friends and families themselves of the detainees.

Within the framework of Law 4/2000 on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, internment in the CIE has become even harder. Hence the title of this document: "Fewer rights, greater suffering". Since the limitations on rights has further restricted the freedoms of detainees, detention has caused even greater suffering. The volunteers who visit the CIEs and offer their support have borne witness to this suffering. The aim of this document is to raise the profile of two directly opposing realities, both of which were nonetheless possible in 2020. The first of these is that for a period of 200 days there were no arrests, no detentions, and no refoulements. For 200 days the Catalan capital was free from the most repressive face of migration policy. The second is that in the last quarter of the year - and this remains so to this day - detainees are living in a state of "aggravated detention", within the framework of detention as stipulated in the legislation. And, after several months, neither the Ministry of the Interior nor the judicial authorities have taken effective measures to alleviate this situation; on the contrary, there appears to have been a desire to normalise and perpetuate detainees' social isolation.

1. A look at the CIE from the perspective of providing support

Between January and March 2020, Migra Studium received 57 visit requests, and provided personal support to 56 people deprived of their freedom at the Zona Franca CIE, making a total of 118 visits in all. Twenty-two of these people needed specialised support. All the visits were made to men, because although renovation work on the women's block was completed in 2019, during the months when the facility was in operation, all the detainees were male. Notably, the 57 people requesting visits from Migra Studium represents only around 26% of the total number of people who were detained in the Zona Franca CIE up to 19 March. Therefore, there remains some way to go if the right to visits is to be fully guaranteed¹.

Although it is true that National Police officers do generally facilitate the visits, twelve incidents have been recorded by volunteers. Most are connected with unjustified delays (of between 20 minutes and an hour) at the beginning of the visits, or exceptionally long waiting times in the visits room (where visitors are locked in until the duty officer opens the door and brings the detainee in). Despite the visiting hours for NGOs being less restrictive than for families, and volunteers always identifying themselves as members of the foundation, on a good few occasions the police officers on duty have interpreted visiting hours in a restrictive way, effectively reducing visiting hours. The most frequently given reason for delays by the police was that there were not enough staff on duty to facilitate the movement required for the visits. The high turnover of officers clearly seems to be one of the factors

1. At the time of writing (end of April 2021), the Ministry of the Interior has still to publish the official data on internment in 2020, and furthermore the data requested by Migra Studium via the transparency portal has not been provided. Since the centre assigns detainees a number, the total number of people who have been deprived of their freedom (219) has been inferred from the last number assigned. Since the resumption of detention in October 2020, Migra Studium has only been able to contact detainees in the CIE by telephone, and this itself has only been possible since January 2021. Migra Studium's own estimate of the number of detainees over the whole of 2020 is 366, 219 from January to March, and 147 from October to December.

hindering the work of the volunteers, given that the rules and regulations were sometimes applied arbitrarily depending on who was on duty, or the volunteer themselves had to inform the officer about what the authorised visiting hours were. Last, the marked increase in tension inside the CIE at the end of February and during early March may also explain the reiteration and number of such incidents, heightening the support team's sense of the rules being applied arbitrarily.

The volunteer team reduced the average number of visits per detainee to 2.1, a figure very similar to that of 2018 (2.5 visits per detainee), and contrasting sharply with the 3.3 visits per detainee in 2019. In the absence of official data, this reduction in the number of visits per detainee can be explained by detentions of less than the legal maximum of 60 days, and the celerity with which the authorities responsible for the CIE reduced the number of detentions in the final weeks prior to the closure of the facility, either deporting detainees (primarily Algerians) or releasing them (other nationalities).

Regarding requests for support requiring more specialised monitoring, the pandemic has generated its own sophistry. Overall, 14 out of 22 cases involved the need for enhanced support during the days just prior to and immediately after the closure of the CIE. In fact, Migra Studium had embarked on what was effectively a campaign to advise detainees and accompany lawyers to the facility to request their release as the steady closure of borders was confirmed, and European Union, Council of Europe, and the Ombudsman's resolutions were announced stating that detention was pointless if deportation was not possible. Following the closure of the facility, a significant number of detainees were released, but were effectively left out on the streets at a time when a state of emergency had been declared and lockdown imposed. The visitor team continued to offer these people support, sourcing emergency housing, beds in shelters, or other solutions. Unfortunately, the special cases of presumed minors and people suffering from mental or physical illnesses represented a proportionally high number of the total (8 out of 22). This is a reminder that internment, in the midst of a pandemic, is most cruel to the most vulnerable populations.

Over the ten weeks during which Migra Studium could spend time in the facility, the people visited were of eight declared nationalities, and almost nine out of every ten were from the Maghreb (51): nineteen Algerians and eighteen Moroccans. Other nationalities represented a tiny percentage of the detainees. As has been the case since 2018, there is a tendency on the part of the government to detain Maghrebi nationals in the Barcelona CIE. There may be several reasons for this very high proportion of people from the Maghreb. First, there is the Ministry of the Interior's efforts to increase the number of deportations by focusing on detaining people from two countries that have bilateral agreements on the readmission of nationals in an irregular situation². And second, since geographical proximity reduces the structural and logistics costs of deportation, and given that the aforementioned countries have consulates in the city of Barcelona and are collaborators in the policies of externalisation of border control (through the admission of third-country nationals in transit), Moroccan and Algerian nationals have become prime targets for detention in the Zona Franca CIE.

2. A look at the human drama of the CIE

In 2020, there was no change in the fact that the CIE is underpinned by hostility towards migrants. Despite having been closed for 200 days, the CIE once again revealed the visible, physical, and structural face of the blind determination not to welcome, not to recognise, and not to assist the other, those who are different, those who come from other lands. In a world in the throes of a pandemic, society continues to support policies that refuse to welcome, protect, recognise, or assist.

The detainees are people with migration projects and the desire for a better life which are about to crumble into dust. Dreams of integration, of regularising their residence status, of working, of studying, of receiving international protection, and of living as citizens in our country are torn apart

2. Morocco, with an agreement in force since 3 February 1992 www.boe.es/boe/dias/1992/04/25/pdfs/A13969-13970.pdf, and Algeria, with an agreement in force since 18 February 2004 www.boe.es/boe/dias/2004/02/12/pdfs/A06350-06352.pdf.

in the CIE: very few success stories emerge from within its walls, very few are released and manage to rebuild their lives. Migra Studium volunteers know that they will often have to deal with failure and suffering. But it is also here that humanity, which is as fragile as is the human condition itself, is discernible. A few visits and conversations make human and humanising support a reality.

The year 2020 was of course marked by the pandemic, but it must also be remembered that at the beginning of the year the country suffered the effects of extreme weather conditions, epitomised in the storm Gloria. The low temperatures, strong winds and incessant rain and damp were felt strongly at the CIE, making living conditions even harder. Moreover, as alarm surrounding Covid-19 grew, tensions among detainees and between detainees and the police also ran high, making their vulnerability and the violations of their rights even more evident. Some of the detainees visited spoke to volunteers of their first-hand experiences of this³.

“My journey has been very long,” Ibrahim (24 years old, Gambian, 56 days at the CIE, released).

“In 2015, I set off for Libya. I had to cross Senegal, Mali, and Burkina Faso, a very long journey, and without saying anything my family: I wanted to spare them the hardship of saying goodbye, and above all I didn’t want them to worry. I love them so much, I couldn’t bear to see them suffer because of me. My clear goal was to take a boat to Italy when I arrived in Libya, which is what I did. But I didn’t expect the crossing to be so hard; when I think back on it what I remember is fear, the horror of dying in those black waters. Because...you know? Two of my companions died and they were thrown overboard, in the middle of the sea...

In Italy, I found temporary work doing gardening and cooking, and then after I’d been out of work for a time, in 2019 some people I knew from Almeria encouraged me to come to Spain. I worked in the greenhouses for a few days; the conditions were terrible, inhuman, and I decided to go back to Italy. But just when I got to the border they asked me for my papers and took me to the CIE. I’ve been shut up in here for 49 days; my family don’t know where I am; the truth is I don’t want to speak to my mother, she’d suffer if I told her I was in the CIE, and I don’t want that. And I’m so alone here. I don’t have anyone; I don’t know anyone. I just dream of a better future, one where I can work and help my family.”

“I don’t feel well, I’m tired”, Hocim (25 years of age, Moroccan, deported after being detained for 42 days).

“I’ve been living in San Sebastián for two years, working and studying. I don’t know why they brought me here.” [Hocim said the same thing, not twice but three, four, maybe even five times. I let him talk, but he kept getting sleepy.] “I’m sorry, I’m tired, they give me pills with my meals...” [He showed me packs of Diazepam and Dormidina, and told me that he took 6 or 7 tablets of Diazepam a day, as well as about 4 tablets of Dormidina just to sleep. He also told me that he wasn’t used to taking medicine, but that the doctor at the CIE told him that he’d feel calmer if he did. It was difficult to converse, but then I realised it was because of all the pills he’d taken. He was there for just ten more days, during which time we met again, and he was still tired, absent, and talking round in circles.]

“I don’t want problems, I just want to live,” El Fekri (25 years old, Algerian, deported after being detained for 53 days).

“Look, I don’t feel like talking,” [this is what he said, but he didn’t move from his chair. I didn’t move either, I decided to give him some space. After less than two minutes, a torrent of words suddenly came out]. “I earn my living, you know? I don’t depend on anyone, I make money from scrap metal, I don’t steal from anyone, I stay out of trouble... all I want to do is to live. Here at the CIE it’s really cold, and there’s no heating. We only have one blanket each; well, now they’ve given us another one. Anyway, I don’t want any trouble. There are policemen who beat up the detainees here, you

3. The names of these witnesses (and in some cases their countries of origin) have been changed to maintain their anonymity.

know? I saw it on Tuesday, but I don't want any trouble." [He fell silent again. We looked into each other's eyes and, without meaning to, I looked down at his right hand. It was half hidden and I could see blood.] "Yes, my hand. It's the worst thing that's happened since I've been here. It was yesterday afternoon: I was praying in my cell, and five policemen came in to make fun of me; I carried on praying and in the end they left. But when they'd gone I just couldn't control my rage and I punched the wall. I'm a fool, I know that, but I couldn't stand the mockery and the insults."

"I'm 16 and I'm really scared," Wanis (16 years old, Algerian, deported).

"I'm a minor. I've told them so many times, but they don't take any notice. I don't know what I can do. I'm really frightened, I don't know why I'm here. I got here five days ago, and I can't sleep or eat. I'm scared when I'm in my cell, in the yard, in the dining room. I just need them to do the test, and then they'll let me out of here. I can't go back to Algeria, I lived on the streets there: my parents are dead, and I haven't heard from my brother for years. I'm really scared."

Wanis arrived in a small boat. He started to talk to the Migra Studium volunteer because it was patently obvious that he was a minor, and in fact the head of the CIE himself asked us to visit him. But they never did do the tests that would provide proof of the fact that he was a minor. During the first week of the state of emergency due to Covid-19 he was deported back to Algeria, one of the last countries to close borders with Spain.

"When I got here I was 14, and I can't go back to my country," Ahmed (19 years of age, Algerian, released when the state of emergency was declared).

"I arrived in Barcelona five years ago, when I was 14. I came by road, I hid between the wheels of a lorry. I think it's the most dangerous thing I've ever done. I think I was really lucky, because they didn't catch me, and I lived in a supervised flat for five years. When I was 18, everything got more complicated: I had to leave the flat, and I went to live with a friend. From then on everything got much more complicated, and one day we were walking down the street and we started a fight. We were arrested and I was taken to the CIE three days later, after being held at the police station."

On 19 March, Ahmed was released when the CIE was evacuated due to the pandemic. Ahmed has a considerable degree of disability (58%) as recognised by the Catalan Health System, which means that he needs to be in contact with a supervisor, even though he is over age. In the days after his release, he was taken in at a shared house for young people in the Maresme area. The whole situation caused a huge amount of stress that he simply did not know how to deal with, and he began to self-harm, deliberately cutting his leg. The wound needed 60 stitches.

"I don't have anywhere to go," Amin (29 years of age, Moroccan, released after 44 days in the CIE).

"My journey from Morocco was really long. But the worst thing was that my relatives in Valencia didn't want to help me, so I stayed in Murcia for a time. There I heard about Lleida, and the opportunities for finding work there. I did find work; I didn't have a contract and was paid very little, but at least it was a job. I decided to go to France, thinking things would be easier there, but my decision led me into a trap: when I was crossing the border at La Jonquera they stopped the bus I was on and asked me for my papers."

He had already been in the CIE for 44 days, and as is all too often the case, had no idea of his legal position, no-one to visit him and he didn't even have a telephone number for the lawyer he had spoken to. Nothing came of his application for asylum, or the appeal that a companion had advised him to make. Over the following days, the pandemic started to unfold, and if the situation in general was confusing, then in the CIE it was completely chaotic: visits, legal counselling, and social services were all forbidden. On 14 March, he called saying that there was general unrest. There were several attempts to go on hunger strike and the detainees did not want to go to their rooms because they were afraid about the health situation. The police responded by unjustifiably isolating detainees and there were various assaults. While in other CIEs detainees were being released, in Barcelona 15 Algerians were deported just a few hours before the borders were closed. A day after the closure of the CIE, we spoke again. What should have been a call to

express relief was another harsh reminder of the reality, their cruel reality. In the midst of the collective hysteria generated by the pandemic, Ali and some others found themselves without a roof over their heads, with nowhere to go and nothing to eat. He said that he would try to contact the City Council and some hostels to see what could be done. In the meantime, that day he was going to sleep in Plaça d'Espanya. And the next day who knew where...

“The cold is unbearable,” Jaime Airreztieta (38 years old, Chilean, 58 days in the CIE, possibly released).

“I arrived at Barcelona airport just like any other tourist, from my beloved Chile. Yes, I really love my country, but life there isn't good: I lost a kidney when a stray bullet hit me during the street riots. I could have died, but instead it made me more determined to come and look for work as a painter. But my tourist visa expired, and one afternoon they asked me for my papers on the underground (maybe it was just a matter of time), and the die was cast.”

Cold is without a doubt the word most often heard during the visits. The food was cold, prepared an hour and a half before it was served, the day rooms were cold, the bedrooms were freezing, and so on. He suffered with lower back pain as the operation to remove his kidney had left him with health issues in that area. He told as many people as possible in the CIE about this, and asked for help. A few heat wraps each week were all he managed to get. He was there for 58 days and 58 nights. The nights were the hardest, finding it very difficult to sleep because the cold affected his back. 1,392 hours of suffering - pushed to the legal limit. He was probably released, taking with him the rage of someone who has been deprived of their freedom under terrible conditions for what is an administrative irregularity.

3. A look at rights in a CIE during a pandemic. The roadmap from temporary closure to resuming detentions

In 2020, three events impacted on the guarantee and exercise of the rights of those detained in the facility: the gradual suspension of its activity in March, the re-starting of detentions in October in the midst of Covid-19 infections, quarantines and lockdowns, and last more detentions, but this time with no visits from either families or NGOs. For the purpose of spotlighting the detainees and their fundamental rights, what follows is a chronicle of the events of 2020. The aim is to provide a clear picture of the situation concerning fundamental rights at the Zona Franca CIE during this period.

3.1. The roadmap to the temporary closure of the CIE

During the first two weeks of March, standard visiting hours were changed, until in the end the management of the CIE decided not to allow visits at all. Tensions were steadily rising within the CIE, and there was an alleged serious police assault on the afternoon of Sunday 15 March, which was reported to the Duty Magistrate's Court on 18 March, attracting media attention. Migra Studium contacted the lawyers who had handled the detainment cases and they provided legal support. The provocation appeared to be minor: a detainee had insulted a group of policemen, who had responded by assaulting him.

3.2. Suspension of visits since the reopening of the CIE

The detainment of foreign nationals in Spanish CIEs resumed on 23 September 2020, and on 5 October 81 Algerian detainees from Majorca were admitted to Zona Franca CIE. The Migra Studium team, however, was unable to resume its schedule of visits to detainees due to a combination of factors: the decision taken by the interim director of the CIE to suspend the visits as a precautionary measure pending a judicial decision on the issue; the delay of the two supervisory immigration judges in reaching a decision, and the contradictory criteria issued, which led to a call from the Public Prosecutor for Immigration for a joint decision to be made based on reasonable criteria to allow visits by lawyers from NGOs and other organisations defending migrants.

Analysis of the interactions between the interim director of the CIE, the presiding judges of Barcelona Courts of Instruction numbers 1 and 30, the Barcelona Public Prosecutor for Immigration, Migra Studium and Irídia legal experts, and even Barcelona City Council, shows that

the rights at play during the exceptional health situation were affected by the differing views of the judicial operators in terms of finding a satisfactory solution to the guarantee and exercise of these rights.

The sustained ban on visits to detainees at the CIE in Barcelona from October 2020 raises certain questions. The first is the suspension of visits by members of NGOs to a CIE, which has been a notoriously conflictive issue over the years. The constant presence five days a week of Migra Studium volunteers at Zona Franca CIE meant that the role assigned to NGOs by the Coordinating Prosecutor for Alien Affairs⁴ could be fulfilled. When Migra Studium exercises its right to visit, it becomes a contributory of the administration in the defence of fundamental rights: “as contributories in safeguarding the rights of detainees, as recognised by article 62 bis 3 LOEX”. Furthermore, the United Nations High Commissioner for Refugees⁵ stresses that the number and quality of the visits received by migrants in detention is very important:

Visits by family and others are a right, not a privilege. They are an important resource, not only to help immigration detainees cope with their situation and the insecurity of their circumstances, but also to help them prepare for life after detention, whether in the country of destination or asylum, or in their country of origin. However, the reality in immigration detention is that visits [...] are difficult. Nevertheless, the guiding principle must be the fostering of contact with the outside world, subject only to security constraints, and then only if there is compelling evidence.

The second issue raised by the ban is that the prohibition on visits reveals the structural inadequacy of CIEs when it comes to safeguarding rights that should not be subject to restriction or impediment when a foreign national is deprived of their freedom of movement as a precautionary measure in a refoulement or deportation procedure.

Last, the third issue is the question of the infringement of rights resulting from the delay and the contradictory nature of the decisions of Governmental Judicial Agencies.

3.3. Chronicle of the resumption of activity at the CIE

- 5 October 2020. The interim director of the Zona Franca CIE informs the presiding judges of Barcelona Courts of Instruction numbers 1 and 30 and the Office of the Barcelona Public Prosecutor for Immigration of the admission of 81 Algerian detainees from Palma de Majorca between 8pm and 9pm. He orders the precautionary suspension of visits until a judicial resolution to the contrary is received.

- 9 October 2020. First notification sent by Migra Studium to the Presiding Judge of Barcelona Examining Magistrates' Court No.1. Migra Studium informs that the CIE's head of security has decided to suspend visits as a precautionary measure until a judicial resolution to the contrary is issued, that the judicial authority must approve a contingency plan for the CIE for the prevention and management of Covid-19 infections, and consequently urging the supervisory court to issue the aforementioned resolution. In addition, Migra Studium provides documentation relating to the measures adopted in other CIEs in Spain: the interlocutory judgement of Murcia Examining Magistrates' Court No.9 of 20 April; the report of the Madrid Regional Police Headquarters of 5 October; and the interlocutory judgement of Las Palmas Regulatory Court 8 dated 8 October. All this complementary documentation shows that measures have been taken to control the spread of infection, to establish visit protocols within the context of Covid-19, to impose capacity limitations in the CIE, and to introduce procedures to be adopted following a positive diagnosis. Since Murcia, Las Palmas and Madrid had previously set out measures, there should have been no impediment to doing the same in Barcelona.

4. Internal note I/2015, within the “Protocolo y Actas de Visitas a CIE”, available at: <http://blogextranjeriaprogestion.org/wp-content/uploads/2016/11/protocolo-visit-a-cie-2015-mf.pdf>.

5. “Monitorear la Detención Migratoria: Manual Práctico”, 2014, available at: www.refworld.org/es/docid/5548c6244.html

To this end, just four days after detentions were resumed in Barcelona, Migra Studium requested that the regulatory court regulate the maximum number of people who could be detained in the CIE; visiting rules for family members and NGOs; prevention and hygiene measures required for the proper functioning of the CIE; and provision for ex officio action in the event of the infection of detainees or staff, including, if necessary, the closure of the establishment.

- 9 October 2020. Procedural order from the Presiding judge of Barcelona Examining Magistrates' Court No.1, responsible for the running of CIEs, acknowledging receipt of the aforementioned documentation, and ordering the CIE to initiate proceedings since the necessary documentation is considered to have been provided, and that this be transferred to the Public Prosecutor's Office so that a report can be issued.

- 14 October 2020. Order proceeding from the Clerk of Court of the Judicial Administration of Examining Magistrates' Court No.1, which refers to a letter from the Public Prosecutor's Office and orders the complaint and documentation sent by Migra Studium to be added to the proceedings.

- 16 October 2020. Second complaint filed by Migra Studium and Irídia at Barcelona Examining Magistrates' Court No.1. This second complaint substantiates the report that a detainee had tested positive for Covid-19 (one of the group of 81 admitted on 5 October) that appeared in the newspaper *El País* on 15 October⁶. In the context of the second wave of infections, and in view of the steps taken by the Catalan Regional Government to strengthen preventive measures, Migra Studium and Irídia insist that the CIEs do not meet the conditions needed to be able to implement the stipulated safety measures. Citing as an example the resolutions adopted by the Regulatory Courts of Murcia and Las Palmas, they call for the closure of the CIE and for alternative arrangements to be made for the care of the person who tested positive for Covid-19, and the safe quarantining of those who had been in close contact with him.

- 16 October 2020. Complaint filed by Barcelona City Council at Barcelona Examining Magistrates' Court No.1. Once it was confirmed that a detainee at the CIE had tested positive for Covid-19 on 14 October, the Barcelona Public Health Agency carried out an inspection visit on 15 October, drawing the following conclusions: that the CIE has an action plan in case of infection by Covid-19, but not a full contingency plan that includes the functional and structural measures to be implemented to prevent the spread of SARS-CoV-2 in the facility; that the 39 detainees in Module B should be considered close contacts given the living arrangements in place in the module; that although all close contacts need to be quarantined for 10 days as of 9 October, only 3 have single rooms, and that the 36 people who cannot be quarantined within the CIE should be transferred to another facility.

In view of the provisions set out by the Regulatory Court of Las Palmas, the City Council requests Examining Magistrates' Court No.1 to order the closure of the CIE until it is able to guarantee the right to physical integrity and health of the detainees, the security staff and other workers.

- 17 October 2020. Order from the Presiding Judge of Barcelona Examining Magistrates' Court No.1. Order stating that the documentation provided by Migra Studium and Irídia, and that provided by the Barcelona City Council, should be added to the proceedings, and forwarded to the Public Prosecution Service.

6. <https://elpais.com/espana/catalunya/2020-10-15/el-cie-de-zona-franca-registra-su-primero-positivo-por-covid-una-semana-despues-de-su-reapertura.html>

- 19 October 2020. Report by the Barcelona Public Prosecutor for Immigration, which is a copy of a report that was actually dated 28 May 2020, in which the Prosecutor gives her opinion on the protection and prevention measures proposed by the Zona Franca CIE's medical service on 11 May 2020. She considers them to be proportionate and appropriate to the health situation, even though their application implies limiting detainees' right to receive visits. The first measure consists of refusing entry to people with symptoms consistent with Covid-19, or with a body temperature above 37.5 °C, and displaying this limiting criteria on the notice boards. The second measure is the introduction of plastic social distancing screens in the visiting areas. The third measure is to maintain social distancing in common areas.

- 28 October 2020. Second complaint submitted by Barcelona City Council to Barcelona Courts of Instruction numbers 1 and 30. It reiterates the complaint filed on 16 October, which recommended the transfer to other facilities of the 36 people who could not be quarantined under sufficiently safe conditions in the CIE, as well as the closure of the facility until there is a full contingency plan in place to address the threat of Covid-19.

It refers to the epidemiological report drawn up by the Barcelona Public Health Agency on 23 October. This new report states that while there is an action plan in place outlining what needs to be done in the case of an infection, it still lacks the scope of a full contingency plan. Reference is made to the 3 people infected, and the 68 who were in close contact with them, 37 in block A and 31 in block B. The recommendation is for a 10-day quarantine period from 23 October. It clearly states that only 6 people can be safely quarantined within the CIE, and so recommends that the remaining 62 detainees should be transferred to another facility. Last, there is another call for the closure of the CIE until it is able to ensure the right of detainees, members of the security forces and other workers to physical integrity and health.

- 28 October 2020. The Ombudsman acknowledges receipt of the complaint Migra Studium submitted that same day. The complaint raised by Migra Studium highlights two problematic situations.

First, the continued lack of a Covid-19 contingency plan, despite repeated requests from Barcelona Examining Magistrates' Court No.1 for such a plan to be developed, a need that had been clearly demonstrated when the first infection occurred in the report issued by Barcelona Public Health Agency on the lack of a contingency plan, the information regarding three cases of infection made public on 22 October (which led to the isolation of six people, one of whom was a policeman), and the presentation of a second letter from Barcelona City Council expressing its concern about the epidemiological situation. It cites the Government Delegation in Catalonia, the Government Sub-delegation in Barcelona, the Regional Police Headquarters in Barcelona, the Management of the Zona Franca CIE, and Barcelona Courts of Instruction numbers 1 and 30 as being responsible for not having issued instructions or resolutions or putting the required measures in place when the CIE was reopened with regard to the rules on visits, the prevention of or reaction to a positive case of coronavirus, and the way in which medical care is provided and the isolation, lockdown and quarantine measures implemented in the facility.

Second, there is the complaint regarding the fact that from 5 October neither NGOs such as Migra Studium, nor detainees' families or the Religious Care Service had been allowed to access the facility or meet with detainees, and that access by the Spanish Red Cross had been restricted to the office area, leaving the yard and common areas off limits.

- 13 November 2020. Third complaint filed by Migra Studium and Irídia concerning the lack of visits and, above all, the isolation and quarantine conditions within the CIE for detainees testing positive for Covid-19. With no response to the complaints from Courts of Instruction numbers 1 and 30 a month after they are submitted, a further complaint is filed with the Regulatory Court, which includes the criminal complaints presented by Irídia in the name of two detainees under coronavirus lockdown for events that took place on 31 October, and informs them of the

situations that have arisen within the context of the isolation measures for Covid-19 in the facility. A request is made to Examining Magistrates' Court No.30 asking that the people who are required to comply with quarantine measures be transferred to suitable accommodation, and that an investigation be carried out into compliance with Covid-19 isolation measures since the reopening of the facility.

- 11 January 2021. Interlocutory judgement of Barcelona Examining Magistrates' Court No.1. The documentation referred to above is collected as evidence. It makes reference to the interlocutory judgement of 7 June 2020, which led to six preventive measures proposed by the CIE's own medical service being put into place to ensure that visits are made in accordance with current legislation. As no new circumstances are considered to have arisen that would require a different decision to be taken, it therefore refers the director to those six measures.

The court shares the Prosecutor's view of the risks to individual and public health posed by the rapid spread of the virus and Covid-19 infections, and therefore advocates the adoption of short- and medium-term preventive measures, with a view to the future. They include the following: rapid detection, diagnosis and isolation of asymptomatic cases; follow up of contacts and study of the quarantine rules that may be considered appropriate. It is considered appropriate to adopt measures to complement those already put in place by the interim director of the CIE, such as:

- Screening. Admission of new detainees between the hours of 6 am and 10 pm so that healthcare staff can immediately identify anybody with symptoms consistent with Covid-19 and refer them to the appropriate care services.
- Access to the Barcelona CIE. Temperature check using non-contact methods for anybody entering the facility, and not allowing access to those presenting a temperature above 37.5°C. Hand sanitiser must be provided for use. Face masks must be worn.
- Daily implementation and the pertinent update of all the measures for the early detection, monitoring and control of Covid-19 established by the Ministry of Health, and communication of these measures to the judicial authority and the Public Prosecutor's Office.

- 15 January 2021. Ruling of the Presiding Judge of Barcelona Examining Magistrates' Court No.30. On 14 January, the interim director of the Zona Franca CIE again requests a ruling. On 15 January, the Court's Presiding Judge visits the CIE. At the end of the visit, the ruling is issued. It reaffirms the ruling issued on 6 November 2020, which confirmed the interim director's policy of restricting outsiders' access to the facility as far as possible to prevent the spread of infection, and which established the conditions under which entry might be permitted to safeguard the detainees' right to defence as recognised within the constitution. It is based on the CIE's medical report of 14 January 2021, which recommended keeping the restriction on visits in place to protect the health of both detainees and CIE staff, and is underpinned by the preventive measures introduced in Catalonia by the Generalitat in response to the pandemic. It upholds the status of the people who habitually live together in each of the two modules of the CIE as "bubble groups". Taking into account the average of ten visitors per day and the size of the visiting rooms, it considers that maintaining the visits system would undermine the status of the modules as bubble groups, and could undermine the hygiene and preventive measures in place. The suspension of visits is confirmed.

- 20 January 2021. Court order from the Public Prosecutor for Immigration. It focuses on the six measures approved in the interlocutory judgement of Examining Magistrates' Court No.1 of 11 January. Specifically, the two measures affecting the right to receive visits are the prohibition of access to people presenting symptoms consistent with Covid-19, or with a body temperature above 37.5 °C (a prohibition that must be posted on the notice boards), and the introduction of

plastic social distancing screens in the visiting areas. To these must be added the imposition of separation and the safe physical distance in waiting rooms, and the sanitisation of spaces.

With the document presented, the Public Prosecutor seeks to obtain a unanimous and joint ruling from the two Regulatory Courts on two issues that affect the rights of detainees: the right to receive visits (Article 16.2.i. RD 162/14), which can only be subject to restriction by means of a court ruling, and the right of detainees to enter into contact with NGOs and international organisations working for the protection of migrants (Article 16.2.i., RD 162/14, and Article 62 bis 1.j, LO 4/2000).

Furthermore, she points out that the two regulatory courts jointly established the extent and scope of the right of NGOs to visit and interview detainees within the established legal limits, rules which had been in operation until the current restriction of visits due to the pandemic.

She reiterates and expands on her request: a joint judicial decision setting out the specifics regarding the restriction of visits by families, third parties and NGOs and, if possible, including health guarantees in line with authorised medical criteria to enable visits, albeit in a limited way. She explains that her insistence on this request is motivated by the need to protect two conflicting rights - the right to health, and the right to receive visits - and that she is seeking maximum legal certainty in such a sensitive matter as that of the precautionary detention of foreign nationals.

She stresses that there can be no court rulings supporting apparently disparate criteria in the name of legal certainty concerning the correct functioning of the centre, monitoring detainee stays in a coordinated way and, of paramount importance, safeguarding the fundamental rights of the detainees.

3.4. Monitoring Covid-19 infections and measures put in place at the CIE

Migra Studium has carefully monitored the situation resulting from the infection of various detainees and how the isolation of those who have tested positive for the disease and those who have been in close contact with them has been managed. The CIE itself acknowledges to the Ombudsman that positive cases and close contacts are managed within the facility without referral to external health centres. Indeed, on 8 February 2021, in the complaint submitted by Migra Studium to the Ombudsman, the management of the CIE stated that, "in compliance with the requirements of this Centre's Medical Service and to protect their own health and that of the rest of the CIE detainees and staff, once the isolation rooms are prepared and the police officers equipped with the mandatory PPE [...], preventive separation measures are adopted, with each person being placed in a single room with video surveillance, prohibited from leaving the room at any time, and with no plans to transfer them to other facilities outside the CIE".

In the course of the preliminary investigation proceedings 1238/2020-M being conducted by Barcelona Examining Magistrates' Court No.21 in relation to the complaint filed by two detainees and brought to the attention of Courts of Instruction numbers 1 and 30 by Migra Studium and Irídia on 13 November 2020, video surveillance images recorded by the CIE of detainees infected with Covid-19 held in isolation were presented. Specifically, on 31 October 2020, the poor mental and physical state of health of one of the detainees who had been in isolation for a week could be observed, together with the conditions in the cell in which he had spent ten days without being allowed to leave. The space was very small, with no furniture, and no washbasin - nothing but a mattress. The images show how at 2 pm on 31 October, the detainee, after self-harming by banging his head against the walls and windows of the room, was restrained by seven uniformed officers of the National Police Force, who tied his hands together and put a helmet with a visor on his head. Minutes later, they are also seen tying his feet together. He remained on the floor for over 3 hours, hands and feet tied, until 5.14 pm. It also shows how during that time the detainee was still agitated, continuing to bang his head on the floor and at times managing to remove the helmet.

The express demands of Migra Studium and Irídia submitted to the Courts of Instruction numbers 1 and 30 include taking action in the light of the video evidence presented, in the sense of ensuring that CIE detainees who need to be in isolation due to Covid-19 are transferred to a suitable facility, such as a health centre, a medicalised hotel, or other appropriate premises. As a secondary demand, they ask the Regulatory Courts to establish in which spaces and under what conditions isolation within the CIE should be supervised, always ensuring that the fundamental rights of detainees are respected, and establishing clear protocols for action. To this effect, under no circumstances should the CIE management agree to restraining someone by tying their hands and feet together, using a helmet, and leaving them on the floor of the cell, especially not after having been locked up for days in total isolation and while suffering from Covid-19.

With regard to the events of 31 October 2020, the Presiding Judge of Barcelona Examining Magistrates' Court No.31 issued a declaration on 18 March 2021 refusing to grant the request made by Migra Studium and Irídia, stating that the isolation and quarantine conditions reported "have no relevance to the issue of supervision of the CIE".

4. Conclusions

The first issue to be addressed is why the interim director of the Zona Franca CIE did not apply the preventive measures approved by the Presiding Judge of Barcelona Examining Magistrates' Court No.1, which had been proposed by the facility's own medical centre, from the moment the first detainees were admitted. He merely communicated the precautionary suspension of visits while the judicial authorities were considering their decision, without providing any evidence of a change of circumstances. Contrary to what is stated in subsequent declarations by the regulatory judges and the Public Prosecutor for Immigration, no concern is being shown for the conflict between legal rights (on the one hand, the right to individual and public health and, on the other, the right of detainees to receive visits), and no alternative ways of managing the situation that might serve as mitigation have been offered. It would not be appropriate here to speculate on their intentions. Their deep concern about the risks of contagion within an enclosed environment where contact levels are unavoidably high is beyond doubt. However, from the perspective of an NGO that supports detainees in the CIE while also observing adherence to human rights, this prolonged lack of access makes it difficult to monitor the situation in a CIE where there has been a significant level of conflict over the years.

The second issue that needs to be raised is the inadequacy of the very building that houses the CIE in terms of safeguarding rights that must be guaranteed for foreign nationals who are deprived of their freedom as a precautionary measure in refoulement or expulsion procedures. There is not a new issue. It is a problem that has been reported by the supervisory immigration judges, the Ombudsman, civil society, and local authorities such as Barcelona City Council. When the designated visiting areas are small rooms with insufficient ventilation, this makes it impossible for visits to take place in the usual way in times of epidemic or pandemic.

The third issue concerns how the justice system functions: slowly and contradictorily. The fact that three full months passed before the publication of the first decisions on the merits of the issues raised has obviously had a detrimental impact on the right of detainees to receive visits, a right which has been suspended. The contradictions between the decisions of the regulatory judges adds to the legal uncertainty, as pointed out by the Public Prosecutor for Immigration.

The fourth issue concerns the sensitivity of the alternative solutions to the conflict between the rights to health and to access. The extreme solution would be to not allow detainees to receive any visits at all, with the exception of those from lawyers from the CIE's Legal Advice Service. The most conservative intermediate solution would mean that lawyers from NGOs and other organisations could visit detainees. Another, broader intermediate solution is feasible: permitting visits by members of NGOs who provide forms of support other than in legal matters, such as psycho-social support. On this continuum, the least restrictive solution would perhaps be to also

allow visits from close family members (spouses or common-law partners, parents, children and siblings).

The fifth issue is the lack of transparency and foresight on the part of the management of the CIE regarding managing the cases of Covid-19 that would likely occur within its walls once detentions were resumed. The treatment of detainees with Covid-19 borders on the characteristics of torture and offences against moral integrity, and is still the subject of criminal proceedings. However, it appears that it does not merit special attention from the judicial bodies that monitor and control detention stays in the CIE. At the very least, it is surprising that the legal requirement stipulated by article 62.6 of Framework Act 4/2000, on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, a requirement whose implementation is entrusted to these courts, does not affect judicial sensitivity towards the protection of fundamental rights.

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