REDIAL PROJECT

National Synthesis Report – Spain

(Draft)

TEMPLATE FOR THE NATIONAL REPORTS ON THE THIRD PACKAGE OF THE RETURN DIRECTIVE – Articles 15 to 18 RD

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Please consider that the questions below do not represent an exhaustive list of issues raised by these provisions but mainly offer a starting point for research and greatly facilitate our subsequent comparative analysis. The jurisprudence to be considered should be primarily the one submitted by the national judge collaborating in the REDIAL Project. Any other jurisprudence which does not touch precisely on these issues might be included in your report, as long as it is relevant for the interpretation/implementation of Articles 15-18 of Chapter IV of the Return Directive. (See in this regard the REDIAL Annotated Return Directive covering both the ECtHR and CJEU relevant case law)

When applicable, please also refer to any relevant administrative practice or on-going legislative changes at national level relating to pre-removal detention.

1. Article 15 RD: detention

a. Competent authorities ordering and reviewing pre-removal detention

Q1. In your Member State, are judicial authorities involved at the initial stage of the detention measure? (E.g. by endorsing a detention order or ordering pre-removal detention upon request of the administration)

YES

If yes: please elaborate further on:

- The type of jurisdiction concerned (civil, administrative, criminal, else?)

- The scope/extent of its competence (e.g. hearing immigration/detention cases only or not)

In Spain, judicial authorities are involved at the initial stage of a pre-removal detention measure. The Judge of Instruction (criminal jurisdiction) orders any pre-removal detention measure upon compulsory request of the administrative authority.

While the decision on the removal is up to the administrative authority and is reviewed on appeal by the contentious-administrative judges (administrative jurisdiction), **any pre-removal detention is decided by the judges of instruction (criminal jurisdiction).**

This is established as a guarantee for the rights of third-country nationals in order to weight the principle of proportionality *vis-á-vis* a pre-removal detention measure. The Judge of Instruction of the place where the detention has taken place by the Police is responsible to order or not and to maintain or not the pre-removal detention and, therefore, the confinement in a Center of Internment (for a maximum period of 60 days).

Nonetheless, some Spanish lawyers and NGOs complain on the very low Immigration Law knowledge that criminal judges responsible for pre-removal detention have. In their views the judges of instruction decide on the internment in line with the request of the Police and '*coping and pasting*' Article 62 of the Spanish Immigration Act 4 /2000 which indicates that in order to decide the internment:

'*[…] under the light of the principle of proportionality, the Judge has to take into account:*

- the risk of ***non presentation***[1] *due to lack of residence or of identification documents,*

- the alien's behavior aimed to render the expulsion difficult or to avoid it,

- as well as the ***existence of a previous sentence or administrative sanctions and of other pending criminal or infraction administrative proceedings.***'[2]

In a different vein, since the Spanish Immigration Act modification operated in 2009 (to the Immigration Act 4/2000), another Judge of instruction is responsible for the protection of rights of detainees once they are at the Center of Internment (or retention chamber at the border). He or she is the Judge of Instruction where the Center of Internment is located and has control functions regarding the concrete Center of internment. Each Spanish Center of Internment must have a Control Judge (Judge of Instruction) following current Article 62,6 Immigration Act 4/2000).[3] In Spanish lawyers and NGOs' opinion these judges with control functions have an appropriate knowledge of immigration law and, therefore, their decisions are respectful with the rights of internees. (See REDIAL Database.[4])

Q2. Which authority is competent for controlling the lawfulness of a pre-removal detention measure?

The Judge of instruction (criminal jurisdiction) who orders a concrete pre-removal detention measure is responsible for controlling the lawfulness of this measure and s/he decided on the length of the detention (never more than 60 days).

Is it the same authority regardless of the length of the detention and/or the issuance of an explicit renewal order? **YES**

Or does the judicial authority concerned control the lawfulness of detention only when a detention order is renewed? **NO**

[1] Article 62 of the Immigration Act does not mention 'risk of absconding' but the '*risk of non presentation due to lack of residence or of identification documents*'.

[2] This last one is the most controversial provision of Article 62 of Immigration Act 4/2000.

[3] Article 62, *6* of Immigration Act 4/2000 states '*[…] The judge responsible for monitoring the stay of foreigners in centers of internment and 'chambers of rejection' at the borders will be the Judge of Instruction where they are located, and a concrete Judge of Instruction must be designated in those judicial districts in which there are more than one. This judge will know,* ***without appeal****, requests and complaints raised by internees as they affect fundamental rights. Also, he or she can visit these centers when he or she meet so serious breach or when deemed appropriate*'.

[4] See, for instance, Order (Auto) of the Court of Instruction nº 1 acting as Control judge of Barcelona Center of Internment (Zona Franca) deciding on 23 June 2014:

- On the obligation to provide comprehensible newsletters for internees in comprehensive languages. *'[...] That the Center needs to provide newsletters with information on the rights of internees translated into the official languages co-official or spoken by a noticeable percentage of the internees; in the case of internees unable to read, the Center will make a verbal and understandable information.*'

- On the obligation to provide comprehensible information on the right of internees to ask for international protection (refugee status or subsidiary protection).

Against this decision there is no possible appeal. It is only applicable to the Barcelona 'Zona Franca' Centre of Internment. While **Article 16, 5 of the RD is not mentioned at all**, this (and similar decisions of judges with control functions of the different Spanish Centres of Internment) are relevant regarding application of Article 16, 5 of the RD.

Q3. Is the judicial review performed in accordance with Article 15 (3) RD automatic or upon applicant's request?

Both

Article 62, 2 and 3 of the Spanish Immigration Act 4/2000 state:

'*2. Detention shall be maintained only for the indispensable period of time necessary for the purposes of the removal, with maximum duration of 60 days (…) 3. When no longer the conditions of internment are met, the alien shall be released immediately by the administrative authority having the care, giving notice of the judge who authorized his/her detention. For the same reasons, it shall be ordered the immediate release of the internee* ***by the judge****,* ***ex officio or upon applicant's request*** *or at the initiative of the Public Prosecutor*'.

Q4. Does your national legislation provide for one or two levels of jurisdiction and under which modalities? (*E.g. a first review by an administrative authority followed by an administrative court and/or a civil or criminal court?)*

In any case, please elaborate further on the type of jurisdiction(s) involved, remedies available, the deadlines for appeal(s) set by law etc.

The Judge of Instruction (criminal jurisdiction) who orders a concrete pre-removal detention measure is responsible for controlling the lawfulness of this measure, the length of the detention (never more than 60 days) and its possible review. Against the decision of the Judge of Instruction the national legislation provides a possible appeal vis-a-vis this same Judge (facultative) and **an appeal to the Provincial Court (Audiencia Provincial).**

Q5. In first instance, do national courts in your Member State *fully* control the legal and factual elements of the case when reviewing the lawfulness of a pre-removal detention measure? Or is the control limited to manifest error of assessment made by the ordering authority? (*E.g.* Mahdi, C-146/14)

Spanish Courts are allowed to fully control the legal and factual elements of the case when reviewing the lawfulness of a pre-removal detention measure.

Q6. Does the judge control *ex officio* all/some elements of lawfulness of the detention irrespective of the arguments of the parties?

YES (is allowed to do it)

Q7. Please elaborate on any differences in the control of lawfulness of detention between the first and the second levels of jurisdiction

b. Judicial Interactions with European and national Courts

Q1. Did national courts in your country request for (a) preliminary reference(s) from the CJEU in relation to detention in the context of the return procedures?

NO

If yes:

- Please elaborate further on the factual/legal context leading to this decision and indicate whether it was preceded by internal jurisprudential debates;

- Please elaborate further on the **follow-up** of the CJEU preliminary ruling at national level (interpretation by the requesting national court, impact on the constant jurisprudence developed in your country; also elaborate on whether there was an impact on the national legislation, or following the preliminary ruling; please refer to other effects of the preliminary rulings)

Unfortunately, in Spain judges normally rely on national sources (constitutional, legal and jurisprudential sources) and very seldom on preliminary rulings of CJEU (see REDIAL database).

Q2. Did national courts specifically refer to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments on administrative detention?

NO to my knowledge.

If yes: which cases and which legal effect did they attribute to them? (*e.g.* do national courts refer to CJEU preliminary rulings when assessing the legality or proportionality of detention, or remedies to unlawful detention?)

Q3. Did national courts refer to the ECHR or the EU Charter in relation to pre-removal detention?

NO to my knowledge

If yes: in which cases and for what purpose? (*E.g.* the right to liberty and security, the right to be heard etc.)

Q4. Have national courts ever disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 15 RD?

YES

If yes: please elaborate further on this issue

Yes, on the basis of Return Directive; see the decision of the Spanish Supreme Court, 10 February 2015 at the REDIAL Database.[5]

[5] Judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation).

The applicant requested the Supreme Court to declare the illegality of several articles of Royal Decree 162/2014. Among other: Article 7.3 and Article 16, 2 K of Royal Decree 162/2014 on family unity within the Center of Internment. Subsections contested were: 'as far as possible' (in Article 7.3) and 'if there are available modules that ensure family unity and privacy' (Article 16.2.k).

The Supreme Court states that the Return Directive imposes in a mandatory manner to provide separate accommodation for families. Therefore, the Supreme Court decides that both provisions challenged Article 17, 2 of the Return Directive and are cancelled.

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues regarding detention?

NO

If yes: please elaborate further on this issue

c. National case-law: major trends

Q1. Is detention under the Return Directive considered to be a measure impeding – depriving – of freedom of movement and/or the right to liberty?

Have the Highest Courts from your Member State already opined on this issue?

YES, see the decision of the Spanish Supreme Court 10 February 2015 at the REDIAL Database.

Q2. Do national courts controlling the lawfulness of the **detention** in your Member State also control the lawfulness of the very **return** decision?

NO

While the decision on the removal is up to the administrative authority and is reviewed on appeal by the contentious-administrative judges (administrative jurisdiction), **any pre-removal detention is decided by the judges of instruction (criminal jurisdiction).**

E.g. Have there been decisions striking down detention measures due to the unlawfulness of the return decision?

NO to my knowledge

Q3. Do national courts reviewing the lawfulness of the detention order also assess whether a **reasonable prospect of removal** exist? (*E.g.* even from the outset when controlling the initial detention order, see *Kadzoev* para. 63-68)

NO (in practice)

Spanish lawyers and NGOs complain on the low Immigration Law (and EU Immigration law) knowledge that criminal judges responsible for pre-removal detention have.

If yes: what legal or other considerations are interpreted by the courts as making the removal unlikely*?*

- *lack of due diligence;*
- *lack of resources (human and material);*
- *lack of transport capacities;*
- *conduct of the Member State of potential return (e.g. an embassy in a given MS refuses generally the cooperation in cases of forced return and accepts only voluntary returns or it does not confirm the nationality of the person concerned (Cf. ECtHR, Tabesh), lack of cooperation of third-countries' embassies;*
- *conduct of the TCN concerned, especially if the latter refuses the cooperation which is indispensable for the issuance of relevant documentation by the Member State of return (cf. ECtHR, Mikolenko);*
- *non-refoulement in a broad sense; best interest of the child; family life; the state of health*

of the third Member State national concerned and individual considerations in accordance with Article 5 RD;

- *the lack of a readmission agreement or no immediate prospect of its conclusion*
- else?

Q3B. When considering the factors above, do the courts:

- Limit their assessment to an abstract or theoretical possibility of removal?

- Require clear information on its timetabling or probability to be corroborated with relevant statistics and/or previous experience in handling similar cases?

Q4. How do national courts controlling the lawfulness of pre-removal detention in your country assess the notion of **'avoiding or hampering the preparation of return or the removal process'?**

Please provide some concrete examples based on the case law collected.

Article 62 of the Spanish Immigration Act 4 /2000 indicates that in order to decide the internment: 'under the light of the principle of proportionality, the Judge has to take into account the risk of non presentation due to lack of residence or of identification documents, the alien's behavior aimed to render the expulsion difficult or to avoid it, as well as the ***existence of a previous sentence or administrative sanctions and of other pending criminal or infraction administrative proceedings***'.

The inclusion of the existence of other previous or ongoing proceedings as a circumstance, which might be taken into account to justify the internment, might raise **doubts as for the conformity** of the Spanish law with the **Return Directive** and more particularly with the El Dridi case law. Nonetheless there is no case law so far.

Q5. How do national courts controlling the lawfulness of pre-removal detention in your country assess the notion **'risk of absconding'?** Does it go beyond the beyond the mere fact of an illegal stay or entry? (ECJ, *Achughbabian*)

As the risk of non presentation due to lack of residence or of identification documents, (Article 62 Immigration Act 4/2000).

Q6. Does your Member State's legislation define objective criteria based on which the existence of a risk of absconding can be assumed?

NO more than 'the risk of non presentation due to lack of residence or of identification documents' (Article 62 Immigration Act 4/2000).

If yes:

- Which ones?

- Even if provided by law, how individual situation and circumstances are taken into consideration by the judge when establishing whether there is a risk of absconding?

- Do statistics or previous experience with the same group of people speak clearly in favour of detention, without the need of an individual assessment being performed?

If not:

- Can the criterion of a risk of absconding still be invoked as a ground of detention?

YES

- How do the courts interpret this notion?

'The risk of non presentation due to lack of residence or of identification documents' (Article 62 Immigration Act 4/2000).

- To what extent are individual situation and individual circumstances taken into consideration by the judge when establishing whether there is a risk of absconding?

- Are there on-going legislative initiatives for the amendment of the law on this issue?

The Spanish Immigration Act 4/2000 when referring to the circumstances which may lead to consider the need to adopt the measure of internment, it does not refer to the risk of 'absconding' but to the risk of 'non-appearance' ('non presentation due to lack of residence or of identification documents', Article 62 Immigration Act 4/2000).

NGOs (SJM, Pueblos Unidos, Amnistía Internacional, etc.) and some judges (Ramiro García de Dios, Control judge at Madrid-Aluche Center of Internment) complain on the application of Article 62 Immigration Act.

Moreover, Article 62 of the Immigration Act 4/2000 indicates that in order to decide the internment:

'under the light of the principle of proportionality, the Judge has to take into account the *risk of non presentation (absconding) due to lack of residence or of identification documents, the alien's behavior aimed to render the expulsion difficult or to avoid it, as well as the* ***existence of a previous sentence or administrative sanctions and of other pending criminal or infraction administrative proceedings***'.

Thus, the concern of NGOs and other stakeholders is related to the application of 'the existence of a previous sentence **or administrative sanctions and of other pending criminal or infraction administrative proceeding**' as *ratio decidendi* for the internment.

Q7. Apart from these two grounds, does either your Member State's legislation, administrative practice or the relevant case law allow any other ground of detention?

YES, see Supra.

Q8. Does your Member State's legislation (and/or practice) provide for alternatives to detention?

YES

If yes: what are the alternatives provided by national law? Does the administration consider additional alternatives?

The RD is clear when stating that '*Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process […]*'.

In Spain, according to Article 61 of the Immigration Act, 4/2000 there are **four alternative measures that can be taken by the police without any ratification by the Judge of instruction**:

- Regular reporting to the competent authorities;

- Compulsory residence in a particular place;

- Withdrawal of passport or document of nationality upon delivery to the person concerned on the receipt of such a measure.

- Preventive detention by the police authority or their agents, for a maximum period of seventy-two hours prior to the application for admission.

The last measure at Article 61 of the Immigration Act 4/2000 is the preventive detention in an Internment Center, and this measure **is the only one which needs prior judicial authorization (Judge of Instruction)**.

Thus, it is clear that Spanish Immigration Act 4/2000 includes less coercive alternatives to detention. Nonetheless, these alternative measures are nor decided by the police neither decided by the judges of instruction responsible for authorizing the internment. Many voices have contested this practice. Moreover, according to NGO *Pueblos Unidos* and other stakeholders, **the alternatives to detention regulated at the Immigration Act 4/2000 are not used in practice with preference to internment**. On the contrary, obligation to surrender passport and documents is used when an irregular migrant has been already detained for 60 days and, therefore, it is impossible to maintain him or her under internment.[6]

Q9. Are decision-making authorities obliged to consider **alternatives measures** before resorting to detention?

NO: there are alternatives under Spanish Immigration Act 4 /2000 **but it is not clear that they must be applied with previous character**[7]**.**

If yes: *please elaborate on whether they have to assess every available alternative to detention to justify their effectiveness or the lack thereof in a given case.*

Q10. How do national courts control whether the administrative authorities lawfully considered alternative measures before ordering detention measures? Is the review limited to manifest error of appreciation? Can they perform a wider control, including substituting their own discretion to that of decision-making authority based on the necessity of respecting the principle of proportionality? (ECJ, *Arslan, El Dridi*)

Describe briefly how the judge will in your Member State assess the proportionality of a detention (quote the main elements to be controlled on that basis)

See supra.

[6] See, for instance, Servicio Jesuita a Migrantes (SJM) (2016), *Informe Cíe 2015: Vulnerables, vulnerabilizados*, 14 September 2016. Also: Amnesty International, *Hay alternativas: No a la detención de personas inmigrantes* (2013), available on: https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/Informe%20CIEs?CMD=VEROBJ&MLKOB=32229590404 (Accessed 20 September 2016).

[7] In Spain, according to Article 61 of the Immigration Act, 4/2000 there are **four alternative measures that can be taken by the police without any ratification by the Judge of instruction**:

- Regular reporting to the competent authorities;

- Compulsory residence in a particular place;

- Withdrawal of passport or document of nationality upon delivery to the person concerned on the receipt of such a measure.

- Preventive detention by the police authority or their agents, for a maximum period of seventy-two hours prior to the application for admission.

Q11. How is the requirement **'as short as possible'** interpreted by national courts in your Member State? Are time-periods fixed by national law or is the length of detention (necessary for removing the TCN) determined in each particular case?

What is the duration of initial detention in your Member State? When does it start according to your national legislation? (*E.g*. date of the apprehension, date of the order, date of the actual placement in detention etc.)

According to the Spanish Ministry of Interior, the CIE/Average stay in days for 2015 has been:[8]

Algeciras Internment Center	25.98 days
Barcelona Internment Center	25.77 days
Madrid Internment Center	18.33 days
Murcia Internment Center	29.01 days
Valencia Internment Center	25.87 days
Las Palmas Internment Center	25.55 days
Tenerife Internment Center	21.08 days
Total average	24.06 days

Q12. How do national courts control the **'due diligence'** of the competent authorities when carrying out the removal process? Do they perform a full or a limited control to manifest error of assessment?

Please provide some concrete examples in which the Judge annulled or quashed a prior decision based on a lack of due diligence from the competent authorities.

No cases as to my knowledge.

Q13. Does the period when asylum proceedings are pending have any impact on calculating the length of detention? (See *Kadzoev* or *Arslan*)

Asylum seekers are not detained in Spain. An internee into a Center of Internment is able to ask for international protection once in the Center and if his or her claim is admissible, the person will leave the Center of Internment.

Q14. In which circumstances may competent authorities decide to extend the initial period of detention (i.e. beyond 6 months according to RD)? Do they proceed with a new assessment of the grounds justifying detention (e.g. a continuing risk of absconding of the detainee)

In no circumstances. The maximum period is 60 days in any circumstances.

[8] Data provided by Spanish Ministry of Interior. See: Servicio Jesuita a Migrantes (SJM) (2016), *Informe Cíe 2015: Vulnerables, vulnerabilizados*, 14 September 2016.

Q15. In your Member State, when Judges declare the detention unlawful, does it lead to immediate release of the applicant? Is release from detention the only remedy provided by the law for unlawful detention?

Please elaborate further on possible differences whether 'unlawfulness' results from procedural flaws or substantial grounds. Please also indicate what are the most often cited grounds for deciding the unlawfulness of detention decision, and for striking down detention measures.

(Waiting for a recent case)

Q16. After being released, can the detainee be re-detained and under which circumstances?

Never on the same circumstances, is that: being irregularly staying. See the decision of the Spanish Supreme Court 10 February 2015 at the REDIAL Database. This is a Judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation). The applicant requested the Supreme Court to declare the illegality of several articles of Royal Decree 162/2014. Among other, Article 21.3 of Royal Decree 162/2014: on the possibility of a new internment to meet the deadline (60 days) for the same reasons as the first internment.

The Supreme Court believes that once agreed internment by particular reasons for a period of less than 60 days, a new decision on internment shouldn't be agreed for the same reasons (to fulfil the maximum period of 60 days). The Supreme Court decided that a new provision would be worded as follows: 'a new internment is only possible (to reach the maximum of 60 days) if it obeys to different causes.' Currently this paragraph has been introduced at Article 62, 2 of Immigration Act 4/2000.

Q17. Please provide a short description of the system of legal aid for pre-removal detainees in your Member State.

Article 62 bis f) of Immigration Act 4/2000 states that internees have among their rights, the right *'to be assisted by legal aid (free if the person proves no economic means) and to communicate confidentially with his/her lawyer, even off-Center hours when the urgency justifies it*'.

2. Article 16 RD: conditions of detention

a. National jurisprudence: major trends

Q1. Does your national legislation provide for the use of specific detention facilities? (as foreseen as a general rule by the Return Directive – ECJ, Bero, Bouzalmate) Who are the persons detained in such facilities?

YES

In this facilities persons detained are, on the one hand:

- Aliens[9] Irregularly staying (see Article 53,1 of Immigration Act 4/2000).

On the other hand:

- Aliens participating in activities contrary to national security or which may harm Spanish relations with other countries, or aliens involved in activities contrary to public order or public policy provided as very serious activities in Law on Safety Protection Citizen.

[9] Spanish Immigration Act uses the term 'aliens' (no the term TCN).

- Aliens encouraging, promoting, or facilitating with profit, individually or forming part of an organization, the entrance of illegal immigration into Spanish territory or it's remain therein, provided that the act constitutes an offense.

- Aliens convicted, in or outside Spain, for wilful conduct that constitutes on offense punishable by imprisonment of more than one year unless the criminal records had been cancelled (see Article 57,2 of Immigration Act 4/2000).

Q2. In case irregular third-countries nationals are detained in prisons, are they separated from ordinary prisoners as required by the RD? In all circumstances? (ECJ, *Pham*)

No applicable

Q3. Which material conditions and particular safeguards are ensured during the detention period? (*e.g.* vulnerable people, hygiene and health care, clothing, external contacts with family members, visits from legal representatives, access to information, education, activities etc. – *Suso Musa v. Malta*, Appl. 42337/12, 23 July 2013; *Ahmed v. Malta*, Appl. 55352/12, 23 July 2013; *Popov v. France*, Appl. 39472/07 39474/07, 19 January 2012)

Article 62 bis of Immigration Act 4/2000 states that internees have the following rights:

a) The right to be informed of their situation;

b) The respect for their life, physical integrity and health and the right not to be subjected to degrading treatment or maltreatment of word or deed and the right to due respect their dignity and privacy;

c) The right to exercise the rights recognized by law, with no limitations other than those arising from their internment;

d) The right to receive adequate medical and health care and be assisted by social services;

e) The right to communicate immediately to their person designated in Spain, their lawyer and to the consular office of the country of their nationality about their internment into the Center;

f) To be assisted by a lawyer, to be provided by law (in case of no means) and to communicate confidentially with him/her, even off-Center hours when the urgency justifies it;

g) To communicate in the schedule established in the Center, with their family, consular officials from their country or others, which may be restricted only by a court order;

h) To be assisted by an interpreter if they do not understand or speak Spanish and for free, if they have no economic means;

i) To take with them their minor children, provided that the prosecution reports in favor of such a measure;

j) To contact with non-governmental organizations and agencies national, international and non-governmental protection immigrants.

How is it applied in practice? Do issues concerning the correct implementation of Article 16 RD and respect of human rights have arisen in practice?

The situation has improved a lot due to the Judges of Control appointed for each Center of Internment (a modification operated in 2009 to Immigration Act 4/2000). However there are important differences as an Order of a particular Judge of Control is applicable only for a concrete Center of Internment. For example: The ability to use mobile phone is recognised in Barcelona, Valencia and Madrid but it is not permitted in the rest of Centers of Internment; the requirement to

notify with 12 hours in advance of expulsion to the internee concerned, governs in Madrid, but not in the CIE of Barcelona.

Q4. Can exceptional circumstances justify the use of extraordinary places and conditions of detention for irregular migrants? (See *e.g.* a refugee crisis, state of emergency etc. ECtHR, *Khlaifia v. Italy*, 16483/12)

YES, see decision of **Tribunal Supremo (Sala de lo Contencioso-Administrativo, Sección Especial) Sentencia de 10 febrero 2015 (RJ\2015\1383).** This is a judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation). The applicant requested the Supreme Court to declare the illegality of several articles of Royal Decree 162/2014, among them:

- Article 5, 2 of Royal Decree 162/2014 on the ability to enable other Centers when CIEs (Spanish name for Centers of Internment) are saturated or due to emergency situations.

The TS *dismisses the challenge to this provision*, arguing that it is consistent with Articles 60, 61 and 62 of the Spanish Immigration Act. Also, the TS states that the nature of these Centers is temporary and only to be used in emergencies. On the other hand, the Supreme Court considers that the contested provision is perfectly compatible with Articles 16.1 and 18.1 of the Return Directive. The directive allows placement in non-specialized Centers, including prisons (Article 16.1) and the possibility of taking urgent measures if there is an exceptionally large number of third country nationals involving an unforeseen burden on the MS (Article 18.1).

Q5. Do national courts assess of their own motion the lawfulness of the detention conditions or only following an individual application?

Both

Q6. In your Member State, have there been judgments striking down detention measures based on conditions of detention?

No to my knowledge.

b. Judicial Interactions with European and national Courts

Q1. Did national courts in your country request for (a) preliminary reference(s) from the CJEU in relation to the place and conditions of detention in the context of return?

NO

If yes:

- Please elaborate further on the factual/legal context leading to this decision and indicate whether it was preceded by internal jurisprudential debates;

- Please elaborate further on the **follow-up** of the CJEU preliminary ruling at national level (interpretation by the requesting national court, impact on the constant jurisprudence developed in your country etc.)

Q2. Did national courts specifically refer to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments on Article 16 RD?

No, as to my knowledge.

If yes: which cases and which legal effect did they attribute to them?

Q3. Did national courts refer to the ECHR or the EU Charter in relation to the conditions of detention?

NO

If yes: in which cases and for what purpose? (*E.g.* the right to liberty and security, the right of the child, right to family life etc.)

Q4. Have national courts ever disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 16 RD?

YES, not very often. See decisión of Tribunal Supremo (Sala de lo Contencioso-Administrativo, Sección Especial) Sentencia de 10 febrero 2015 (RJ\2015\1383).

If yes: please elaborate further on this issue.

Tribunal Supremo (Sala de lo Contencioso-Administrativo, Sección Especial) Sentencia de 10 febrero 2015 (RJ\2015\1383) It is a judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation). The applicant requested the Supreme Court to declare the illegality of several articles of Royal Decree 162/2014, among other:

- Article 5, 2 of Royal Decree 162/2014: on the ability to enable other Centers when CIEs (Spanish name for Centers of Internment) are saturated or due to emergency situations.

The TS *dismisses the challenge to this provision*, arguing that it is consistent with Articles 60, 61 and 62 of the Spanish Immigration Act. Also, the TS states that the nature of these Centers is temporary and only to be used in emergencies. On the other hand, the Supreme Court considers that the contested provision is perfectly compatible with Articles 16.1 and 18.1 of the Return Directive. The directive allows placement in non-specialized Centers, including prisons (Article 16.1) and the possibility of taking urgent measures if there is an exceptionally large number of third country nationals involving an unforeseen burden on the EM (Article 18.1).

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues?

NO

If yes: please elaborate further on this issue.

Q6. Do the courts (or any other competent authority) supervise and control places and detention for family and children more specifically than for other TCNs detained for the same purpose?

YES

In Spain, families are rarely under internment. Nonetheless, as already mentioned, the Supreme Court judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation), states that the Return Directive imposes in a mandatory manner to provide separate accommodation for families. Therefore, the Supreme Court decides that two provisions at Royal Decree 162/2014challenged Article 17, 2 of the Return Directive and are cancelled.

4. Article 18: Emergency situations

Q1. Has the national legislation implementing Article 18 RD – or Article 18 as such – been activated in your Member State?

NO

If yes: what was the derogation from the requirement of speediness? How has 'unforeseen heavy burden on Member States' administrative or judicial staff' been interpreted by the judiciary?

General remarks and transversal issues

Q1. Have national courts ever addressed/clarified the scope of application of pre-removal detention – in comparison with initial police custody, imprisonment under criminal law, detention in the context of asylum procedures etc.?

Yes both the Supreme Court and the Constitutional Court (see, for instance, two cases at Redial database)

Q2. Had the implementation of the Return Directive brought any changes in adjudicating the issues relating to lawfulness of immigration detention, alternatives to detention, access to national courts, effective legal/judicial remedies and legal aid etc.?

Not too much. The most outstanding change has been amplifying the maximum period time for internment from 40 days (before the Return Directive) to 60 days currently.

Q3. Has the Return Directive and/or European jurisprudence impacted on the division of competences between the administration and national judiciaries? What about the relation between the different levels of the judiciaries?

Not really. As the judges of instruction responsibility for decisions on internment is previous to the Return Directive.

Q4. According to you, what are the remaining major issues in the judicial implementation of the Return Directive when it comes to detention? Consider, for instance, the effective return procedures; protection of human rights of TCNs subject to the Return Directive etc.

Unfortunately, criminal judges responsible to decide on pre-removal detention measures are not well prepared on EU Immigration law and they hardly guarantee the correct application of it. In many cases internment does not take into account individual circumstances, it is necessary to strengthen a more adequate judicial review.

In 2015, according to data provided by the Ministry of Interior[10] fr**om 20,552 expulsion orders issued**, only **6,869 were executed**; **3,075 on grounds of irregularly staying**.

The consequence is that in Spain many TCN entered an Internment Center but finally they are not expelled from Spanish territory. For instance, at the Internment Center of Algeciras (South of Spain), in 2015 a total of 189 women were interned and only 17 were expelled (Source: Spanish Ministry of Interior). Thus, the internment measure is no justified in most of the cases.

A striking example is the graphic prepared by SJM from the memories of the Attorney General's Office (2009-2010) and Annual Reports of the Spanish Ombudsman as National Prevention Mechanism on Torture (2011-2015):[11]

Year	**Nº of alien's internees in Internment Centers**	**Nº of aliens already expelled**
2009	26,032	18,308
2010	16,590	8,934
2011	11,456	6,825
2012	11,325	5,924
2013	9,002	4,726
2014	7,340	3,843
2015	6,930	2,871

[10] See: Servicio Jesuita a Migrantes (SJM) (2016), *Informe Cíe 2015: Vulnerables, vulnerabilizados*, 14 September 2016.

[11] Id.

The implementation of Chapter IV of the Directive 2008/115 in the Spanish legal system

I. Judicial control of pre-removal detention

In Spain the decision on the removal of a TCN corresponds to the administrative authority and is reviewed on appeal by the contentious-administrative judges (administrative jurisdiction). However, judicial authorities are involved since the initial stage of a pre-removal detention measure. The Judge of Instruction (criminal jurisdiction) orders every pre-removal detention measure upon compulsory request of the administrative authority.

Moreover, the Judge of instruction who orders a concrete pre-removal detention measure is responsible for controlling the legality of this measure and she or he decides on the length of the detention (never more than 60 days). Against the decision of the Judge of Instruction the national legislation provides a possible appeal vis-a-vis this same Judge (facultative) and an appeal to the Provincial Court (Audiencia Provincial).

This judicial intervention regarding every pre-removal detention is established by the Spanish legislation as a guarantee for the rights of third-country nationals in order to weight the principle of proportionality regarding the detention measure. The Judge of Instruction of the place where the detention measure has taken place is responsible to order or not – and to maintain or not –[1] the pre-removal detention and, therefore, the confinement in a Center of Internment (for a maximum period of 60 days as mentioned above).

Regarding the grounds to authorize a pre-removal detention measure, Article 62 of the Spanish Immigration Act 4 /2000 indicates that:

'*[…] following the principle of proportionality, the Judge has to take into account:*

- *the risk of non presentation*[2] *due to lack of residence or of identification documents,*

- *the alien's behavior aimed to render the expulsion difficult or to avoid it,*

- *as well as the existence of a previous judgment or an administrative sanction or other pending criminal or infraction administrative proceedings*'.[3]

The inclusion of the existence of other previous administrative sanctions or ongoing administrative proceedings as a circumstance which might be taken into account to justify the internment might raise doubts as for the conformity of the Spanish law with the Return Directive and more particularly with the *El Dridi* case law. Nonetheless there is no Spanish case law on the issue so far. Moreover, NGOs (SJM, Pueblos Unidos, Amnesty International, etc.) and some judges (Ramiro García de Dios, Control judge at Madrid-Aluche Center of Internment) complain on the lack of sufficient motivation of most judicial decisions on internment as pre removal measures.[4]

In a different vein, since the Spanish Immigration Act modification operated in 2009 (to the Immigration Act 4/2000) another judge of instruction is responsible for the protection of rights of detainees once they are at the Center of Internment (or at the retention chamber at the border). He or

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[1] Article 62, 2 and 3 of the Spanish Immigration Act 4/2000 states that '*2. Detention shall be maintained only for the indispensable period of time necessary for the purposes of the removal, with maximum duration of 60 days (…) 3. When no longer the conditions of internment are met, the alien shall be released immediately by the administrative authority in charge, giving notice to the judge who authorized his or her detention. For the same reasons, the immediate release of the internee by the judge, ex officio, upon applicant's request or at the initiative of the Public Prosecutor shall be ordered*'.

[2] Article 62 of the Immigration Act does not mention 'risk of absconding' but the '*risk of non presentation due to lack of residence or of identification documents*'.

[3] This last one is the most controversial provision of Article 62 of Immigration Act 4/2000.

[4] See, as an example of many Spanish judicial decisions on detention as pre-removal measure, the decision of Court of Instruction No. 2 of Málaga Case 4514/15 Negotiated S2, 19 June 2015. As a unique legal reasoning to decide the internment, the Judge states that '*It is appropriate to order the detention of Mr XXX for the purpose to guarantee the effectiveness of the administrative resolution (his removal) because without his internment there is a risk that he can avoid the administrative action due to his* ***lack of roots*** *in Spain*'. Isn't this 'lack of roots' a very general justification which could result in a non-proportional detention?

she is the Judge of Instruction where the Center of Internment is located and has control functions regarding the concrete Center. Each Spanish Center of Internment must have a Control Judge (Judge of Instruction) following current Article 62, 6 Immigration Act 4/2000).[5] According to Spanish lawyers and NGOs' opinion these judges with control functions have an appropriate knowledge of immigration law and, therefore, their decisions are in general respectful with the rights of internees. (See REDIAL Database.[6]) However, a decision of a particular Judge of Control regarding the rights of internees is only applicable to the Center of Internment under his or her control. In practice, it has created in Spain different levels of rights for internees according to the Center where they are detained and to the decisions of each particular Judge of Control.

II. Alternative measures

The Return Directive is clear when stating that '*Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep under detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process […]*'.

In Spain, according to Article 61 of the Immigration Act, 4/2000 there is alternative measures to detention that can be taken by the police without any ratification by the Judge of Instruction:

- Regular reporting to the competent authorities;

- Compulsory residence in a specific place;

- Withdrawal of passport or document of nationality upon delivery to the person concerned on the receipt of such a measure.

- Preventive detention by the police authority or their agents, for a maximum period of seventy-two hours prior to the application for admission.

The last measure within Article 61 of the Immigration Act 4/2000 is the pre-removal detention in an Internment Center, and this measure is the only one that needs prior judicial authorization (Judge of Instruction).

Thus, it is clear that Spanish Immigration Act 4/2000 includes less coercive alternatives to detention. Nonetheless, these alternative measures neither are nor usually decided by the police neither decided by the judges of instruction responsible for authorizing the internment. Many voices have contested this practice. Moreover, according to NGO *Pueblos Unidos* and other stakeholders**,** the alternatives to detention regulated at the Immigration Act 4/2000 are not used in practice with a preference to internment; on the contrary, obligation to hand over passport and documents is practiced sometimes when an irregular migrant has been already detained for 60 days and, therefore, it is impossible to maintain him or her under internment.[7]

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[5] Article 62, 6 of Immigration Act 4/2000 states '*[…]The judge responsible for monitoring the stay of foreigners in centers of internment and 'chambers of rejection' at the borders will be the Judge of Instruction where they are located, and a concrete Judge of Instruction must be designated in those judicial districts in which there are more than one. This judge will know, without appeal, requests and complaints raised by internees as they affect fundamental rights. Also, he or she can visit these centers when he or she appreciates a potential violation of internees rights or when deemed appropriate*'.

[6] See, for instance, Order (Auto) of the Court of Instruction nº1 acting as Control judge of Barcelona Center of Internment (Zona Franca) deciding on 23 June 2014:

- On the obligation to provide newsletters for internees in understandable languages. '*[...] That the Center needs to provide newsletters with information on the rights of internees translated into the official languages co-official or spoken by a noticeable percentage of the internees; in the case of internees unable to read, the Center will make a verbal and understandable information*'; and on the obligation to provide clear information about the right of internees to ask for international protection (refugee status or subsidiary protection).

It is to be noted that here is no possible appeal against this decision and that it is only applicable to the Barcelona 'Zona Franca' Centre of Internment.

[7] See, for instance, Servicio Jesuita a Migrantes (SJM) (2016), *Informe Cíe 2015: Vulnerables, vulnerabilizados*, 14 September 2016. Also: Amnesty International *Hay alternativas: No a la detención de personas inmigrantes* (2013), available

It is also important to note here that the 2016 Observations for Spain by the Committee on the Elimination of Racial Discrimination[8] also asked Spain to apply 'possible alternatives' to the detention of immigrants in the Centers of Internment.

III. Time of internment

It is to be noted that Spanish legislation limits the time of internment to a maximum of 60 days in an absolute manner According to the Spanish Ministry of Interior, the CIE/Average stay in days in 2015 has been:[9]

Internment Center	**Days (average)**
Algeciras	25.98
Barcelona	25.77
Madrid	18.33
Murcia	29.01
Valencia	25.87
Las Palmas	25.55
Tenerife	21.08
Total average	24.06

IV. Internment of asylum seekers

Asylum seekers are not detained into Internment Centers in Spain. An internee into a Center is entitled to ask for international protection once in the Center. If his or her claim is admissible, the person will leave the Center of Internment. Nonetheless, NGOs complain about cases of internees with an asylum seeker profile (or a profile of victims of traffickers) but who have never had in practice the opportunity to apply for asylum or protection (due to a weak level of understanding, no translation means, no effective legal advice, etc.).[10]

V. Re-detention

After being released, the detainee can't be re-detained in the same circumstances, that is: his or her stay being irregular. See the decision of the Spanish Supreme Court 10 February 2015 at the REDIAL Database.[11]

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on: https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/Informe%20CIEs?CMD=VEROBJ&MLKOB=32229590404 (Accessed 20 September 2016).

[8] CERD – International Convention on the Elimination of All Forms of Racial Discrimination 89 Session (25 April 2016-13 May 2016), available on:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1072&Lang=en.

[9] Data provided by Spanish Ministry of Interior. See: Servicio Jesuita a Migrantes (SJM) (2016), *Informe Cíe 2015: Vulnerables, vulnerabilizados*, 14 September 2016.

[10] Id.

[11] This is a Judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment are approved (CIES Regulation). The applicant requested the Supreme Court to declare the illegality of several articles of Royal Decree 162/2014. Among others, Article 21.3 of Royal Decree 162/2014: ruling the possibility of a new internment based on the same reasons as the first internment.

The Supreme Court believes that once the internment is agreed for concrete reasons a new decision on internment shouldn't be agreed for the same reasons (to fulfill the maximum period of 60 days). The Supreme Court decided that a modified provision would read as follows: 'a new internment is only possible (reaching a maximum of 60 days) if it responds to different causes'. Currently this paragraph has been introduced at Article 62, 2 of Immigration Act 4/2000.

VI. Persons under detention on pre-removal grounds

The persons detained in Centers of Internment, are, on the one hand:

- Aliens[12] irregularly staying (see Article 53,1 of Immigration Act 4/2000).

On the other hand:

- Aliens participating in activities threatening national security or that may harm Spanish relations with other countries, or aliens involved in activities threading the public order or public policy considered as very serious activities in Law on Safety Protection Citizen.

- Aliens encouraging, promoting, or facilitating with profit, individually or forming part of an organization, the entrance of illegal immigration into Spanish territory or it's remain therein, provided that the act constitutes an offense.

- Aliens convicted, inside or outside Spain, for wilful conduct that constitutes an offense liable to punishment by imprisonment of more than one year, unless the criminal records have been cancelled (see Article 57,2 of Immigration Act 4/2000).

VII. Internees rights

Regarding internees' rights, Article 62 bis of Immigration Act 4/2000 states that internees have the following rights:

a) The right to be informed of their situation;

b) The respect for their life, physical integrity and health and the right not to be subject to degrading treatment or mistreatment of word or deed and the right to due respect their dignity and privacy;

c) The right to exercise the rights recognized by law, with no limitations other than those arising from their internment;

d) The right to receive adequate medical and health care and be assisted by social services;

e) The right to communicate immediately to the person designated in Spain, their lawyer and to the consular office of the country of their nationality about their internment into the Center;

f) The right to be assisted by a lawyer provided by law (in case of no economic means) and to communicate confidentially with him/her, even off-Center hours when the urgency justifies it;

g) The right to be able to communicate in the schedule established by the Center, with their family, consular officials from their country or others, which may be restricted only by a court order;

h) The right to be assisted by an interpreter if they do not understand or speak Spanish and for free, if they have no economic means;

i) The right to take with them their minor children, provided that the Prosecutor reports in favor of such a measure;

j) The right to contact with national, international non-governmental organizations and agencies devoted to the protection immigrants.

The situation of internees' rights has improved thanks to the Judges of Control appointed in each Center of Internment (a modification operated in 2009 to Immigration Act 4/2000). However there are important differences as an Order of a particular Judge of Control is applicable only for a specific Center of Internment. For instance: The ability to use mobile phone is recognised in Barcelona, Valencia and Madrid but it is not permitted in the rest of Centers of Internment; the requirement to notify with 12 hours in advance of expulsion to the internee concerned, is applicable in Madrid, but not in the CIE of Barcelona.

[12] Spanish Immigration Act uses the term 'aliens' (no the term TCN).

It is also important to note here that the 2016 Observations for Spain by the Committee on the Elimination of Racial Discrimination[13] urged the State to investigate 'independently, quickly and completely' allegations of torture or ill treatment in these Centers. The use of racial and ethnic profiling by police in their identity checks is also of concern to the UN committee, who asked for the State to 'take the necessary steps to end' these practices prohibited by the so-called gag law but which, according to the agency, still persist.[14]

VIII. Emergency situations

In a Supreme Court judgment[15] ruling an appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation); the applicant requested the Supreme Court to declare the illegality of several articles of Royal Decree 162/2014, among others:

- Article 5, 2 of Royal Decree 162/2014 on the ability *to enable other Centers when CIEs (Spanish name for Centers of Internment) are filled up or due to emergency situations*.

The TS *dismisses the challenge to this provision*, arguing that is consistent with Articles 60, 61 and 62 of the Spanish Immigration Act. On the other hand, the Supreme Court considers that the contested provision is perfectly compatible with Articles 16.1 and 18.1 of the Return Directive. The directive allows placement in non-specialized Centers, including prisons (Article 16.1) and the possibility of taking urgent measures if there is an exceptionally large number of third country nationals involving an unforeseen burden on the EM (Article 18.1).

So far, in Spain this exceptional situation has not taken place

IX. Families under internment

In Spain, families are rarely under internment. Nonetheless, the Supreme Court judgment ruling the appeal against Royal Decree 162/2014, of 14 March (RCL 2014, 395), whereby the operating rules on the functioning of Immigration Centers of Internment is approved (CIES Regulation), stated that the Return Directive imposes as mandatory to provide separate accommodation for families. Therefore, the Supreme Court decided that two provisions at Royal Decree 162/2014 challenged Article 17, 2 of the Return Directive and is cancelled.

X. Conclusions

As it has already been said, unfortunately, criminal judges responsible to decide on pre-removal detention measures are not well prepared on Immigration law (and on EU Immigration Law) and they hardly guarantee its correct application. In many cases internment does not take into account individual circumstances so that it is necessary to strengthen a more adequate judicial review.

Moreover, it seems that in many occasions internment as pre-removal measure is decided without being really necessary and that alternative measures are not properly applied.

In 2015, according to data provided by the Ministry of Interior[16] out of 20,552 expulsion orders issued, only 6,869 were executed; 3,075 of them on grounds of irregularly staying.

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[13] CERD – International Convention on the Elimination of All Forms of Racial Discrimination 89 Session (25 April 2016-13 May 2016), available on:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1072&Lang=en

[14] Id.

[15] Tribunal Supremo (Sala de lo Contencioso-Administrativo, Sección Especial) Sentencia de 10 febrero 2015 (RJ\2015\1383).

[16] See: Servicio Jesuita a Migrantes (SJM) (2016), *Informe Cíe 2015: Vulnerables, vulnerabilizados*, 14 September 2016.

The consequence is that in Spain many TCN entered an Internment Center but are not finally expelled from Spanish territory. For instance, at the Internment Center of Algeciras (South of Spain), in 2015 a total of 189 women were interned and only 17 were expelled (Source: Spanish Ministry of Interior). Thus, it is to be concluded that the internment measure is not justified in most of the cases.

A striking example is the graphic prepared by SJM based on the memories of the Attorney General's Office (2009-2010) and Annual Reports of the Spanish Ombudsperson as National Prevention Mechanism on Torture (2011-2015).[17]

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Currently, some political parties (*Podemos*) are asking to close all Spanish Centers of Internment. The rest of political parties (Popular Party Socialist Party and *Ciudadanos*) are against the closure but have opened a reflection on the importance of a better fulfilment of internees rights.

Regarding internees rights, the most usual complains of internees consists on lack of effective legal assistance due to very weak translation means as well as no enough contact with the outside world (family, NGOs, others). They also complain on limited possibilities of reporting on their situation to judges or other the competent public authorities (Ombudsperson, prosecutors, etc.); no safety measures for vulnerable persons; limited health care and the lack of information about their situation, rights and obligations.[18]

The Ombudsperson has recently made recommendations to the Commission on Relations with the Ombudsperson (Spanish Senate) regarding the necessity to improve the conditions of internees inside the Centers of Internment. The main recommendation of the Ombudswoman is an improvement on the conditions of the Centers facilities and buildings and to enhance the health care and services provided to internees, a greater presence of NGOS and better information to detainees on their rights. She has pointed out that only approximately 41% of the persons entered in the CIE are finally expelled. Finally, the Ombudswoman has also said that people who have an irregular administrative situation (irregularly staying) coincide in the Centers of Internment with people that have come out of prison and are pending expulsion (as a substitution of their penalty of deprivation of liberty).[19]

[17] Id.

[18] Personal interview of Cristina Gortázar Rotaeche with Santiago Yerga (SJM responsible for relations with the Centers of Internment).

[19] The Ombudsperson has explained that after a recent visit to the Center of Internment in Madrid (CIE Aluche), her office has moved to the General Prosecutor of the State the listing of 17 internees that, in the time of the visit, expressed be minor of age (while Spanish legislation prohibits minors detention into Centers of Internment). She has also asked the Prosecutor to report on the investigation that remains open as a result of the incidents(a protest neutralized with violence by the officials of the Center of Aluche, Madrid) on October 18, 2016. See: Ombudsperson Office, 20 December 2016, available on: https://www.defensordelpueblo.es/noticias/soledad-becerril-explica-supervision-del-defensor-en-los-cie/?utm_source=mdirector&utm_medium=email&utm_campaign=Los%20CIE%20y%20la%20presentaci%C3%B3n%20del%20Informe%20%22El%20asilo%20en%20Espa%C3%B1a%22.