

Detention Centres: An Unjust and Ineffective Policy

The administrative detention of migrants is being performed in many countries around the world in violation of international human rights standards. Administrative detention should be applied only as an exceptional measure and based on the evaluation of each individual case. At present, it is used as a tool, however ineffective, to combat so-called 'illegal' immigration.

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Administrative detention: A global institution

In many countries, 'closed' facilities have been established in which not only undocumented economic migrants are detained, but also asylum seekers and refugees. The Italian 'centri di identificazione ed espulsione', the French 'centres de rétention administrative', the Spanish 'centros de internamiento' and the British 'removal centres' are facilities designed for the detention of so-called 'irregular migrants', in other words, people who enter the country of destination without the correct legal documents or, having made a regular entry, fall into an irregular status of residence and are now without a permit to stay.

Detention is aimed at guaranteeing the repatriation order to their home country when these measures cannot be executed immediately. This situation may arise if the migrant's embassy fails to establish the migrant's identity, or pending the organisation of repatriation travel arrangements. This restriction of personal freedom is applied to people who have not committed a crime, but who have simply committed an infringement of the administrative procedures for entry and stay. In one European country, Italy, these infractions have recently been deemed a crime. Moreover, it should be pointed out that, more and more often, administrative detention is applied to asylum seekers – people in need of international protection.

In 2008, Migreurop conducted a census of 235 removal centres in Europe: the countries with the highest number of centres were Germany (41), France (37) and Spain (22). In every EU country there is at least one of these facilities¹.

The European Union's Return Directive

The characteristics, management, type and timing of detention vary from country to country. At the European level, the Return Directive (2008/115/CE), adopted by the European Parliament in June 2008, sets EU-wide rules for the return of illegal immigrants to their home country. The directive gives migrants

the option of leaving EU territory voluntarily within a period of 7 to 30 days. If they fail to do so, national authorities can issue a removal order and detain them for a period of up to 18 months. Immigrants in that category are also banned from EU territory for a period of five years. The Directive does not set a minimum period of detention and each Member State has the freedom to provide more favourable laws. However, the immediate effect of its approval was to justify a tightening of administrative detention procedures. Once again, Italy distinguished itself by immediately approving a law extending the maximum period of detention in detention centres from 60 to 180 days. The Return Directive has been broadly criticised for its restrictive nature and is referred to by anti-racism and human rights activists as the 'Directive of Shame'.

Article 5, paragraph 1 of the European Convention on Human Rights states that:

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law.

Among the cases listed, letter f refers to the hypothesis of:

... arrest or detention of a person to prevent from entering the territory illegally, or a person

against whom action is being taken with a view to deportation or extradition.

According to Article 5 (4) of the same Convention:

Everyone arrested or detained ... shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

The wording of this rule is in conflict with the extension of the administrative detention period to a period so long that it cannot be aimed at implementation of the removal measure.

According to the jurisprudence of the European Court of Human Rights (ECHR), Article 5 (1) (f) of the Convention for the Protection of Human Rights allows the regular administrative detention of a person "against whom action is being taken with a view to deportation or extradition"; however, the measures limiting freedom need to be "proportionate and appropriate" and the duration of detention must be commensurate to the need to ensure the measures for forced expulsion.

According to the ECHR, a violation of Article 5 can result from both a 'non-standard' administrative

BOX 4: European asylum policy

The Dublin Convention of 1997, replaced by the Dublin II Regulation in 2003, was the first step towards the harmonisation of asylum procedures across the European Union. It set the criteria for determining the Member State responsible for examining an application for asylum made in any one of the Member States. This measure was aimed at discouraging 'asylum-shopping', i.e., the process of requesting asylum in multiple EU Member States. The Dublin Convention also promotes the principle of the 'safe third country', according to which asylum-seekers can be returned to the transit non-EU country through which they travelled if the latter is considered 'safe enough'. A number of critics have interpreted the Convention as an attempt by Western European countries to shirk their responsibility to protect the persecuted and most vulnerable. Besides, the principle of the 'safe third country' suggests the intention to keep asylum-seekers outside EU-territory, rather than carrying the burden of examining the validity of their asylum claims.

In recent years, EU countries have been proceeding towards increased harmonisation of their asylum policies. The European Pact on Immigration and Asylum, adopted in October 2008, sets the objective of creating a single European asylum procedure by 2012. Under the Swedish Presidency of the EU, the European Commission proposed a scheme to coordinate across the EU the resettlement of refugees from countries beyond the EU, the so-called Joint EU Resettlement Programme. The Commission hopes that this new scheme will ease the flow of migrants trying to reach Europe illegally. The identification of common annual resettlement priorities and the logistics involved with the reception of refugees would be carried out by EU Member States together with the support of a new agency, the European Asylum Support Office, to be created in 2010. Member States will participate in this programme on a voluntary basis. The Commission is also exploring ways of strengthening EU solidarity on migration flows, including by offering EU money to relocate refugees arriving in the most exposed countries such as Malta, Italy and Greece.

¹ Updates on migration policies adopted by European countries and the different national systems in relation to detention centres are available from: www.migreurop.org.

detention with respect to these criteria and the lack of an effective remedy (i.e., a procedure for appeal or review of the detention order). According to Article 5 (4) of the European Convention on Human Rights:

[E]veryone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Each person subject to arrest or arbitrary detention has the right to compensation. Even in this case, a decision should be made within a short time, and certainly not after several months in a detention centre.

The Schengen agreements do not impose the establishment of detention centres, only that individual EU countries provide measures for forced repatriation. Although the Return Directive allows for the administrative detention of irregular migrants for a period of up to 18 months, it also refers to the principle of appropriateness and proportionality of the forced expulsion (Article 15). Moreover, this Directive affirms that deportation should be a last resort, after attempting voluntary repatriation.

The goal of European legislation harmonisation is still far from being achieved. The EU Return Directive does not prescribe a minimum period of administrative detention, and assigns national legislators the right to suspend appeals against forced expulsion measure.

Conclusions

Detention centres are the result of an approach that continues to promote:

- policies aimed at containing migration, rather than fostering social inclusion;
- policies based on an idea of citizenship that makes 'borders' the discriminator for the guarantee of social and civil rights (but not for economic interests), subordinating the first to the second; and
- domestic policies based on an idea of 'development' as centred on national economic interests, instead of people's wellbeing.

According to this logic, the right to life and freedom of movement is subjugated to economic and other interests by building new walls and creating new cultural and physical borders. The detention centres in Europe are symbols of these new frontiers; they are not (and cannot be) useful institutions for combating illegal immigration. The phenomenon of illegal immigration can only be reduced through a total change of migration and immigration policies to facilitate the entry, stay and regular settlement of foreign citizens in European countries². It would be desirable if, in the

² Over the years, the democratic and anti-racist movements in Italy have put forward several proposals. Among the

next few years, these migration policies became a central issue for European governments to overturn the order of priorities as they exist now. Furthermore, in conclusion, to clear up any ambiguity: the democratic and anti-racist European movements have been asking for the 'overhauling' of detention centres, when they should be simply asking for their closure³. ■

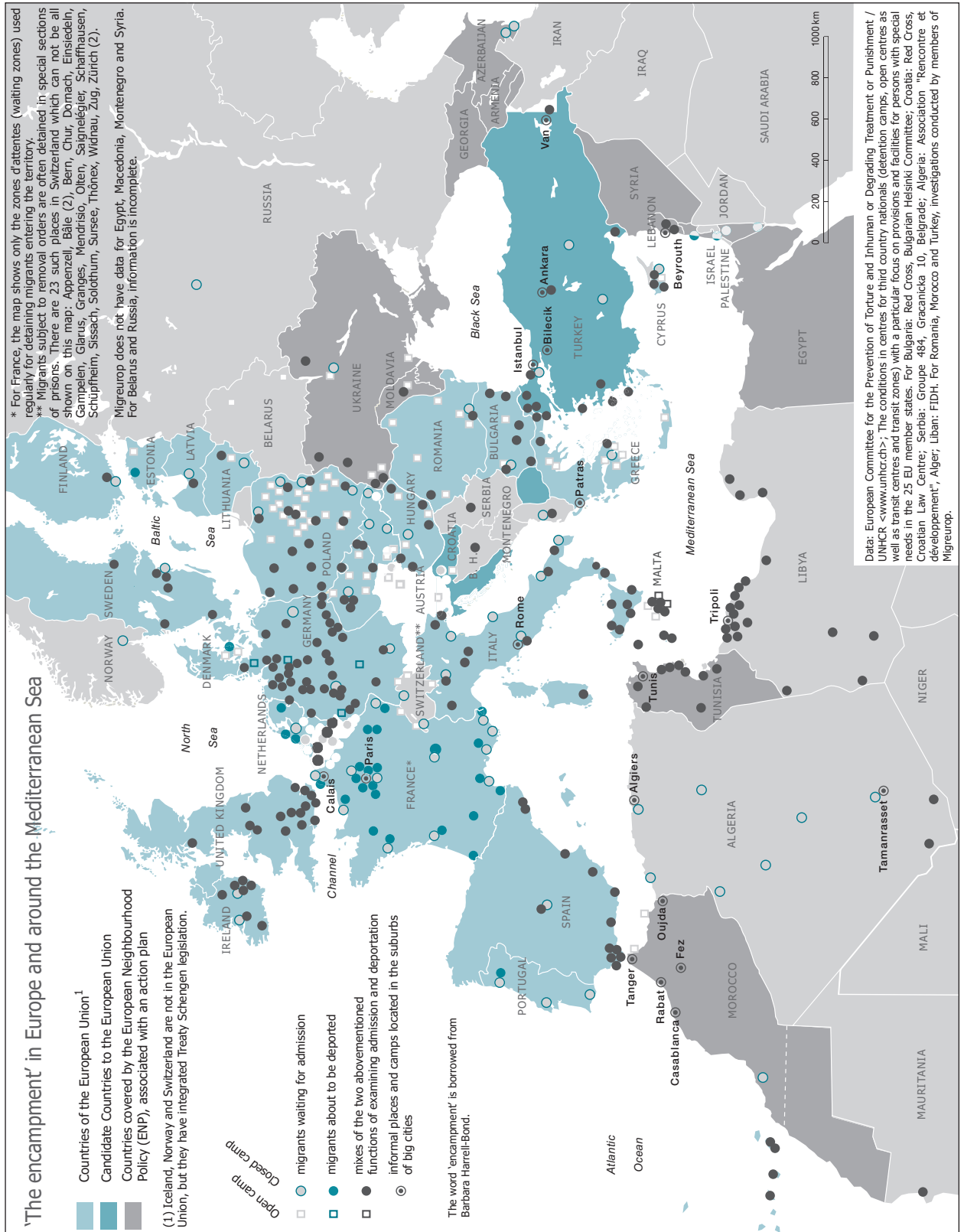
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most significant contributions developed since the mid-1990s are: proposals for laws on citizenship and voting rights promoted by the Anti-racist network in 1997; the analysis made by the Migrants' Table of the Italian Social Forum on labour issues; the document "Migrants and rights" developed by ARCI (Associazione di Promozione Sociale) with many civil society organisations for an alternative law on immigration and asylum (www.arci.it); the document for the constitution of the immigration committee in Italy; the proposals for a different allocation of resources made by the Sbilanciamoci! campaign in its annual reports; asylum documents prepared by ICS, Médecins sans Frontières (MSF) and Amnesty International; the proposals by ASGI (Association for Immigration Law Studies) and Magistratura Democratica in "Per una legislazione giusta ed efficace sull'immigrazione. 7 anni di analisi e di proposte sulla condizione giuridica dei migrant"³; and the critical analysis of the Bossi-Fini law and the alternative proposals contained in *Altreesconomia*, ASGI, Lo straniero, Lunaria, Terre di mezzo, "Bada alla Bossi-Fini!", 2002 and ARCI, ASGI, ICS, Lunaria, Progetto Diritti, "Migranti persone", 2005.

³ As regards Italy, the violation of human rights and living conditions inside the centres, and the waste of public resources devoted to them, has been denounced by: MSF, *Rapporto sui Centri di Permanenza Temporanea e Assistenza*, 2004; and Denticò N., Gressi M., *Libro bianco. I Centri di Permanenza temporanea e Assistenza in Italia un'indagine promossa dal Gruppo di Lavoro sui CPTA in Italia*, 2006. The Court of Auditors has reported in its reports the irrationality and the lack of transparency of public funds allocated to migration policies and, in particular, to finance the construction and operation of detention centres. See the reports drawn up by the Court of Auditors for the years 2002, 2003 and 2004, *Corte dei Conti, Programma di controllo. Gestione delle risorse previste in connessione al fenomeno dell'immigrazione*. For more information please visit www.corteconti.it.

Figure 4: 'The encampment' in Europe and around the Mediterranean Sea



Source: Migreurop, available from: <www.migreurop.org/IMG/pdf/L_Europe_des_camps_2009.pdf>