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TO BE OR NOT TO BE: Deficiencies in the Spanish Reception System

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Are we or are we not a country of asylum? It seems that Spain has become a country of asylum but its policies have not yet recognised it. From 2,588 requests for asylum in 2012 and 5,947 in 2014, the numbers have risen to 14,881 in 2015, 31,120 in 2017, and 55,668 in 2018. Hence, after being at the bottom of the list of numbers of asylum seekers in European Union countries, Spain now occupies the fourth position. If in 2015 61% of asylum seekers were from Syria and Ukraine, in 2017 55% came from Venezuela, Colombia, El Salvador and Honduras, with a significant increase in numbers of Palestinians and Algerians.

With the growing numbers of asylum applications, the number of places in the state reception system has risen almost proportionally: from 930 in September 2015 to 8,600 in December 2018. Nevertheless, this has occurred reactively and with no medium-term planning. In the ministries involved (Ministry of the Interior and

Ministry of Work, Migration and Social Security) temporary staff was taken on, perhaps under the impression that the "problem" would go away. Outside the ministries, the expo-

ponential increase in reception places has been the exclusive responsibility of social organisations, thus upsetting the earlier balance between public places and those managed by social organisations. All of this has happened with an Asylum Law (Law 12/2009) which, a decade after being passed, still lacks regulatory development. This is not easy to explain. In recent years, the government has claimed that this is a prudent delay because of the coming review of European directives, but the absence since 2009 can only really be explained by the fact that it has never been a priority for the different governments. In fact, Spain came to be a country of immigration that did never recognise itself as a country of asylum. The arrival of more than four million immigrants between 2000 and 2010 was always channelled through the

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With rising numbers of applications, the number of places in the state reception system has increased almost proportionally but this has happened reactively and with no medium-term planning.

It frequently happens that individuals and families in situations of extreme vulnerability are obliged to leave the reception facilities without having any clear alternative solution to their situation.

The burden of administrative delays have been shouldered by asylum seekers who, in this period of waiting, are not viewed as such and are therefore expected to manage alone.

The state reception system is clearly centralised, without the participation of regional and local administrations and with a significant part (increasing in recent years) outsourced to social organisations.

The Spanish legal system has paved the way for a more decentralised system involving the Autonomous Communities as key administrations although, at present, no one seems to have much idea of what the practical implications of these recent rulings will be.

It is essential that the devolution of powers should come hand in hand with a proportional transfer of resources.

much-vaunted job offer. If immigrants have a job offer they can get an entry visa, a residence permit via the individual regularisation mechanism called *arraigo*, and renovation of the residence permit after the first, third, and fifth years. This system is especially open in times of economic growth and terribly closed when there are few jobs to be had.

What has changed then since 2015? The global context has changed with the wars in Syria and Ukraine as major triggers and, subsequently, with structural violence (cases in which the word “war” tends to be avoided) in many countries of Latin America and Africa. The forms of entry have also changed. While it is not always easy to get a job offer in times of crisis, the Asylum Law of 2009 opened the way to asylum seeking, which had previously been closed in practice owing to systematic rejection of applications. In other words, refugees who previously entered the country via the job offer now have the option of doing so in the most befitting way, which is to say, by means of requesting asylum.

Given the rising numbers of applications for asylum, what has happened with the reception system? Unlike entry via the job offer, a request for asylum guarantees (for a time) the basic needs of those lacking their own financial means. But are these basic needs being covered? How? What are the main deficiencies of the state reception system? What is changing, and which direction should we be taking now?

The arrival of more than four million immigrants between 2000 and 2010 was always channelled through the much-vaunted job offer.

Rigidity and Dispersion

The Spanish reception system guarantees the basic needs of asylum seekers for the first 18 or 24 months. In the first phase (the “reception” stage), lasting between six and nine months depending on the person’s degree of vulnerability, asylum seekers are accommodated in one of the government’s Refugee Reception Centres (CARs) or in centres or flats managed by publicly funded social organisations. Besides lodging, refugees are provided with social and psychological support, language courses, and job placement. In the second phase (the “integration” stage), lasting 12 months and extendable to 18 months, asylum seekers participate in support (or “accompaniment”) programmes offered by the social organisations but they are expected to live independently, although with help for rent and upkeep. This second phase coincides with the granting of a work permit after the sixth month.

One of the most recurrent criticisms of the state reception system is its rigidity. It is rigid, in the first place, because it does not adapt sufficiently to the variety of profiles of asylum seekers. It is true that, in some cases, if they show sufficient autonomy, they can go directly into the second phase but, although this possibility exists on paper, it rarely happens in practice. The rigidity of the reception system is particularly felt among cases of greatest vulnerability, which include people with physical or mental health prob-

lems, and women who are victims of trafficking or gender violence, or over 65 years of age. Although in these cases the time frames for each phase are extended some months, the system itself is not designed to attend their specific needs and the periods allocated end up being extremely short. This situation has worsened since the collapse of the system after 2015. In a system with more applicants than places, the possibility of prolonging time limits and being thus maintained within the state reception system is very slight. Accordingly, extremely vulnerable people and families may have to leave the reception facilities without having any clear alternative to their situation.

Another significant area of rigidity in the state reception system occurs with assignation of places. In the first (reception) phase, asylum seekers must go wherever there is a place available, whether this is in one of the four state centres (two in Madrid, one in Seville, and one in Valencia) or in one of the centres or flats managed by social organisations. This, in itself, is not specific to the Spanish case and, to some extent, is inherent to any system aiming to distribute not only asylum seekers but also reception responsibilities on an equitable territorial basis. Nevertheless, if the time of waiting before entering the first phase drags out (in recent years, even up to five or six months), by the time they can finally move into the first phase of the system, applicants may be obliged to move to another province. In the case of minors, this (again) entails a change of schooling in a new setting. Furthermore, although the presence of family members is supposed to be a criterion in the assignation of a place in a certain province, in practice (and even more so with the overload of recent years), places are allocated depending on availability. You go to what you get. When the arrival of members of the same family unit is staggered over time, this might even mean that they are dispersed over different provinces.

Autonomy or Exclusion

Another deficiency of the state reception system in the present circumstances is the difficulty for asylum seekers of attaining the longed-for autonomy. In contrast with the rigidity of the first phase, during which they must move to and live in the place they have been assigned, it is expected that asylum seekers will be living “autonomously” after just six months and, by eighteen months, this “autonomy” is supposed to be complete. Here, the principle of autonomy, which could, in itself, be one of the great virtues of the system, ends up being one of its chief deficiencies. It is a virtue because it promotes integration of asylum seekers from the very first day and is therefore very different from other European reception systems in which they are held in isolation until their applications have been processed. Yet this virtue becomes a deficiency when the desired autonomy is not achieved and, consequently, even while asylum seekers are waiting for their applications to be processed, the basic needs which should be covered for every asylum seeker as a right are not guaranteed.

This is where autonomy becomes isolation and, in many cases, leads directly to socioeconomic exclusion. At present, with high unemployment rates, precarious contracts and extremely high rental prices (especially in big cities where most asylum seekers are concentrated) the possibilities for becoming truly “autonomous” are limited. Hence, even those who still receive a living allowance and help with rent find it very hard to survive. Added to this are the difficulties of finding work and housing six months after arriving in the country (with the resulting limitations in terms of language and knowledge of the milieu) and the discrimination to which they are frequently subjected, not only as foreigners and new arrivals but also as having short-term residence permits (for six months) which can be terminated at any point if the application of asylum is rejected.

Delays and infringements

Waiting is a fact of life for every asylum seeker. Applying for asylum means waiting for a decision and what will happen next depends on this. When procedures are slow, it may be years before an answer is given. When the application is turned down, as happens in 3 out of 4 cases, the waiting ends with loss of the residence permit, thus falling into irregularity after years of effort (not only by the applicant but also by the administration) in trying to achieve integration. If the applicant has managed to find work and housing in this time, irregular status could mean losing them. Accordingly, this is not only about waiting for a resolution but also, depending on the eventual decision, it could mean revocation of everything achieved so far. This situation is common to all European asylum systems. The longer the procedures take, the greater the threat to everything attained up to that point.

In the Spanish case, beyond the final wait, there are also long delays for people trying to enter the state reception system. Since 2015, access to the programme has only been possible after formalising the application for asylum or, in other words, after having the first appointment. The greater number of applications and, in particular, the lack of foresight by the Office of Asylum and Refuge (OAR) of the Ministry of the Interior have prolonged waiting times by up to five or six months. In November 2018, the termination of contracts of interim staff at the OAR entailed a collapse that not only meant that appointments were being scheduled after more than a year had elapsed but it also led to a slowing down of procedures assigning places in the reception system. The result is that, without an appointment or allocated place, there can be no access to the reception system and, as a result, no possibility either of having basic needs guaranteed. Hence, the burdens of administrative delays have been borne by asylum seekers who, in this time of waiting, are not considered as such and therefore must consequently manage on their own.

Besides the waiting, there are also situations of exclusion within the system. Until very recently, the so-called “Dubliners”—asylum seekers returned from other European Union

countries as a result of application of the Dublin Regulation—had no access to the state reception system. They were asylum seekers but they were not allowed to re-enter the reception system because the government considered that they had renounced their places as soon as they moved to another country and deduced, therefore, that they had no need of them. In January 2019, after two rulings handed down by the Spanish High Court of Justice in Madrid, the Spanish government was finally obliged to readmit them since it was deemed that refusal to accept them was a violation of their rights as asylum seekers. This situation has been especially serious when it has involved women victims of trafficking who, after being moved to other countries to be exploited, were then sent back, only to find themselves in an even more extreme situation of vulnerability when they were denied access to the reception system.

Finally, the termination of periods covered by the state reception programme can also entail premature exclusion. This is where asylum procedures (jurisdiction of the Ministry of the Interior) again intersect with the reception system (jurisdiction of the Ministry of Labour, Migrations and Social Security). At a time when asylum procedures can drag on for years, many people leaving the state reception system are still on hold and, consequently, have the formal status of asylum seekers. However, ending the periods covered by the state reception programme leaves them unprotected. If we add to

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this the difficulties of access to the job market and housing, as well as those deriving from their condition as newly-arrived foreigners with a temporary residence permit, termination of the state reception programme may mean either entering standard social services for those who meet the requirements (for example, time of being registered in the municipal census) or total lack of protection. In this regard, it is important to draw attention to the way in which the state reception programme, which aims at autonomy and integration, frequently ends up causing situations of dependence and exclusion.

It is precisely because of these periods of waiting and exclusion that the administrations of the Autonomous Communities and, above all, at the local level have decided to act. Without jurisdiction in matters of asylum, the presence of asylum seekers (individuals and whole families) sleeping rough in many Spanish cities led these administrations to develop supplementary reception programmes. In most cases, they are temporary accommodation facilities provided as an emergency response for people who are waiting to enter the state reception system, have been unable to enter it, or who have already been gone through it. If at first most of these cases ended up in shelters for homeless people, the trend (especially in the big cities) has been to provide specific facilities for asylum seekers. At the beginning of 2019, Madrid had more than 400 places of temporary accommodation for asylum seekers. In addition to these places, municipalities like Barcelona (with its Nausica programme) have provided more structural systems that not only provide temporary

lodgings but also include a whole social intervention programme (again, especially designed) with a view to creating greater autonomy and better integration.

(In)coordination and externalisation

The state reception system is clearly centralised, without the participation of Autonomous Communities and local administrations, and with a substantial part (growing in recent years) outsourced to social organisations. One of its constant features has been the precarious nature of its management. First, and even more after 2009 and the new Asylum Law without regulatory development, the programme's conditions are defined by the management manual addressed to social organisations. Depending on resources and the number of applications, these conditions have been varying from year to year. Second, each organisation presents a different project to the call for grants. In this sense, it is both a centralised system run by the government and, at the same time, fragmented among the different organisations. Third and finally, although they are a fundamental part of the reception system, the social organisations have been financed since 2013 by way of a competitive annual call for grants. This kind of financing gives rise to considerable uncertainty in the organisations as well as jeopardises the continuity of the services and assistance provided.

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clusively thanks to the efforts of the social organisations. If in 2015 the government centres (CARs) had almost half the places and CEAR, ACCEM and the Red Cross had the other half, by the end of 2018 the social organisations managed 94% of the places in the state reception system as a whole. As in 2015, when the two ministries opted to enlarge their staff by means of temporary contracts, the number of places in the reception system has risen thanks to improvised and last minute calls for grants to social organisations. This has been a fast and "externalised" way of growing with major impact on the organisations. CEAR, ACCEM and the Red Cross have undergone exponential oversizing of their teams with huge implications in terms of management and training new staff. The social organisations entering the state reception programme for the first time also had to respond hastily and without prior experience in the field.

All of this came about with hardly any coordination between the state, on the one hand, and the Autonomous Communities and municipalities on the other. When in September 2015 the Spanish government agreed to the relocation quota proposed by the European Commission, it convened representatives of the Autonomous Communities and the Spanish Fed-

eration of Municipalities and Provinces (FEMP) in what was called the Sectoral Conference on Immigration. On leaving it, most of the delegates expressed their disappointment over a meeting they considered to have been more informative than any attempt at coordination. This has been a constant ever since. The same criticism has repeatedly been expressed by the Generalitat (Government) of Catalonia and the mayor of Barcelona, Ada Colau. In several letters addressed to Mariano Rajoy, as well as in international forums, Colau has reiterated her demand for greater transparency regarding the use of European integration funds, more funding for cities, and better coordination between the different administrations.

2019 is a year of changes. In fact, the government has announced a "shock plan" with a 165.9% increase in the budget for dealing with asylum applications and a 26.9% rise in the budget earmarked for reception of refugees and migrants. In addition to this increase in resources, envisaged in budgets that were not approved in the end, procedures are also underway in order to cover staff needs with civil service posts in both ministries. Besides these measures, the High Court of Justice in Madrid has ruled in favour of the Generalitat of Catalonia: although in legal terms asylum is subject to state jurisdiction, reception "facilities" and "itineraries" come indeed (as established by the Asylum Law) under the jurisdiction of the Autonomous Communities. This ruling, together with the Supreme Court's rejection of the final appeal of the Spanish government in October 2018, paves the way for a restructuring of the calls for funding that finance reception places in the social organisations and, indirectly, the reception system in general.

Although no one seems to have a very clear idea of what this will mean in practice and what the timing will be, there does seem to be agreement that the Supreme Court Ruling has opened the door to a more decentralised system with the Autonomous Communities as the key administrators. For this very reason and given the deficiencies of the present reception system, it is essential to consider where to go from here.

Where to go?

Given conditions in the countries of origin and asylum figures, it is essential that Spain recognises itself as a country of asylum and not just one of immigration. This means stipulating the rules of procedure to implement the Asylum Law (2009) and expanding (structurally and not just temporarily) the numbers of staff attending to asylum applications and coordinating the reception system. The latter process seems to be underway. If we focus on the reception system, recognising Spain as a country of asylum means tackling the deficiencies of the system. It is therefore essential to rethink its rigidities, make sure that the principle of autonomy does not turn into a synonym for dependence and exclusion, and reduce the number of people who are left out because they are still waiting to get in, or have not been accepted, or have already been gone through the reception system.

Reflecting on the rigidities of the reception system implies as well rethinking the reception given to the most vulnerable cases. This would necessarily entail not only lengthening the time frame of each phase in cases of need but also creating specific places for people in situations of vulnerability. As for the exclusion and dependence arising from the principle of autonomy, the answer is much more complex since this issue is indissociable from the general conditions of the job and housing markets. Together with social and economic policies, it is also necessary to influence those factors that make the situation of asylum seekers even more precarious because of their condition as new arrivals (without knowing the language, the social milieu, and support networks), the insecurity of having residence permits that can be revoked at any time, and also being subject to administrative delays. In this regard there is a need to reinforce the social intervention programmes within the reception system and speed up the asylum procedures.

Recognising itself a country of asylum means that Spain must also guarantee asylum seekers' rights to have their basic needs covered. This means shortening waiting times. Administrative delays, entailing months of waiting for the first appointment and therefore months outside the reception system, should not be an additional burden for asylum seekers. Procedures must also be speeded up so that the reception programme does not end before the application is resolved. In both cases, the solution is simple: more resources for the Office of Asylum and Refuge (Ministry of the Interior) so as to be able to respond to the (predictable and probably structural) increase in the number of applications. It seems that this is also starting to happen. In order to be able to guarantee basic needs it will also be necessary to think about the exclusions generated by the system, partly as a result of a lack of reception places. For example, having spent time residing in Spain or in an EU member state should not be a reason for exclusion.

Finally, the Supreme Court decision in favour of the Generalitat of Catalonia requires a review of the very governance of the reception system. Here, there are three basic sets of questions. First, what kind of public-private management is desirable? Is continuing to grow solely on the basis of places offered by the social organisations the only option? Or is the aim to return to a mixed model and, accordingly, to consider creating places managed by the public sector? Second, what kind of relationship should be established with the social organisations? Would it be feasible to continue with the competitive annual grants or would it be better to aim for agreements that would make it possible to establish a more stable relationship, thus enabling continuity of the services and support provided? And, third and finally, there is no doubt that the ruling paves the way for decentralisation of the reception system. In this regard, it is essential that the delegation of powers should come together with a proportional transfer of resources. Other key questions are, how can asylum seekers be distributed among the Autonomous Communities? How can decentralisation be guaranteed without entailing

differences in the services and, consequently, in the levels of basic needs that are guaranteed? And, no less relevant, how can true multilevel governance be assured, not only that of the Autonomous Communities with the two ministries concerned, but also of the former with local administrations and social organisations?

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