

*Jacqueline Carvalho da Silva* ■

Human smugglers or smuggled persons? An approach to the situation of youths accused of human smuggling in southern Spain

Przemytnicy osób czy przemycone osoby? Podejście do młodych osób oskarżonych o przemyt ludzi w południowej Hiszpanii

Abstract: The lack of safe entryways into Europe generates alternative maritime routes from Africa to the European continent. In recent years, there has been an increase in these arrivals and in the detention of individuals accused of migrant smuggling on the Central Mediterranean route to Italy and the North-west African (Atlantic) route to the Canary Islands upon their arrival by sea. Both the UNODC and various NGOs have suggested in recent reports that the punitive response to boat captains may have less to do with tackling the crime of human smuggling than it may initially appear. During fieldwork conducted as part of the JEPRAN project, a surprising number of youths accused of human smuggling were identified in a prison in Almería, Spain, having arrived via the Western Mediterranean route. This serendipitous finding allows for reflection within this article on the crime of human smuggling across different routes into Europe based on interviews with youths accused of this crime and imprisoned in the south of Spain.

Keywords: migration, asylum, sea, crime, defencelessness, law, moral

Abstrakt: Brak bezpiecznych dróg wejścia do Europy przyczynia się do powstawania alternatywnych szlaków morskich z Afryki na kontynent europejski. W ostatnich latach odnotowano wzrost liczby przypadków korzystania z tych szlaków i przypadków zatrzymań osób oskarżanych o przemyt migrantów na szlaku środkowosródziemnomorskim do Włoch i szlaku północno-zachodnioafrykańskim (atlantyckim) na Wyspy Kanaryjskie zaraz po ich przybyciu drogą morską. Zarówno UNODC, jak i różne organizacje pozarządowe zasugerowały w ostatnich raportach, że reakcja karna wobec kapitanów łodzi może mieć mniej wspólnego z walką z przestępstwem przemytu ludzi, niż mogłoby

się początkowo wydawać. Podczas badań terenowych przeprowadzonych w ramach projektu JEPRAN w więzieniu w Almerii w Hiszpanii zidentyfikowano zaskakującą liczbę młodych ludzi oskarżonych o przemyt osób, przybyłych szlakiem zachodniośródziemnomorskim. To przypadkowe odkrycie pozwoliło na podjętą w niniejszym artykule refleksję na temat przestępstwa przemytu osób różnymi szlakami do Europy w oparciu o wywiady z młodymi ludźmi oskarżonymi o to przestępstwo i osadzonymi w więzieniu na południu Hiszpanii.

Słowa kluczowe: migracja, azyl, morze, przestępstwo, bezbronność, prawo, moralność

Introduction

Entry into Spain on precarious boats departing from the African continent towards Spanish territory are carried out via two main maritime routes: towards the Spanish mainland crossing the Strait of Gibraltar, the so-called Western Mediterranean route, and the North-west African (Atlantic) route, towards the Canary Islands. The numbers representing arrivals via these routes vary considerably. In 2018, 58,569 arrivals were recorded, meaning that Spain received the highest number of irregular maritime entries in Europe. In 2021, there were 41,945 entries; then came a 25.6% decrease in 2022 (31,219 entries), followed by another increase to 57,071 entries in 2023 (UNHCR data as of 31 December of each year).

The Western Mediterranean route includes the Algeria-Alboran Sea route, which typically starts from the Algerian coast and heads for the southern Spanish coasts of Almería, Granada and Málaga. The journey can span up to 200 kilometres and poses significant risks due to the fragile and often overcrowded boats used by migrants. Severe weather conditions, including intense winds and treacherous currents, heighten the risk of shipwrecks. The Spanish Coast Guard and the European Border and Coast Guard Agency (Frontex) have actively patrolled this area in recent years.¹

Another component of the Western Mediterranean route is the Strait of Gibraltar route, connecting northern Morocco, particularly from Tangier and Tetouan, to southern Spain, including destinations like Tarifa and Algeciras. Only 14 kilometres at its narrowest point, this is the shortest route from Africa to Europe. However, the dense commercial maritime traffic and strong currents make the journey perilous. The weather conditions can change rapidly, further endangering the small boats. Spanish and Moroccan authorities, along with Frontex, maintain intensive surveillance, resulting in frequent interceptions and rescues.²

¹ In Spain, the media are starting to report on operations involving the imprisonment of the boats' drivers (Gómez 2023).

² Social entities point to the seriousness of the dangers of these routes: in 2023 the Pro Human Rights Association of Andalusia (APDHA) published a report on human rights on Spain's southern border, in which they denounce the deaths and disappearances along these routes. The full report is available at <https://www.apdha.org/frontera-sur-2023>. In May 2024 Migreurop, a European and African network of activists, published an infographic of the deaths in Ceuta (Migreurop 2024).

The Atlantic route to the Canary Islands begins from various points along the west coast of Africa, mainly Senegal, Mauritania and Morocco. This is the longest and one of the most dangerous routes, with distances exceeding 1,500 kilometres. The rudimentary and overloaded boats used for this journey face extremely treacherous Atlantic conditions, including severe storms, large waves and strong ocean currents.³

The maritime entry routes for irregular immigration, although not the most numerous, are the most conspicuous and tend to grab headlines in the media (Carvalho 2023). It is also the most dangerous, and deaths during the journey are difficult to quantify. The Spanish NGO Caminando Fronteras uses alerts from boats to track deaths and disappearances in the Western Mediterranean, following their fate and cross-checking this information with alerts from relatives or acquaintances who are looking for those who set out to sea. In 2018, 843 deaths and disappearances were recorded on routes to Spanish territory; in 2019 there were 655; in 2020 this number reached 2,170. The trend continues to grow, with a peak of 4,404 deaths in 2021, 2,390 in 2022 and 6,618 in 2023. Another route, the Central Mediterranean to the Italian coasts, accounts for more deaths and is considered the most dangerous. The International Organization for Migration (IOM), with data updated to March 2024, has registered a total of 23,046 deaths and disappearances along this route within the framework of the Missing Migrants Project, launched in 2014.

In Spain, irregular immigration is not considered a crime *per se*, but an administrative offence according to Organic Law 2/2009, on the rights and freedoms of foreigners in Spain and their social integration. The crime of human smuggling is classified under Article 318 bis of the Penal Code. This provision penalises individuals who promote, facilitate or aid in the illegal smuggling or clandestine immigration of people to or from Spain or to another European Union country. The penalties for this crime vary depending on the specific circumstances of the case. In general, the prison sentence can be from four to eight years, and it is aggravated to a minimum of eight years if participation in a criminal organisation is proven or if lives are endangered. Profit motive is also considered an aggravating factor.⁴ Additionally, fines of up to triple the value of the profits obtained from the crime can be imposed on legal persons. Given the specific characteristics of the offence, the prison sentence can be replaced by expulsion. Mitigating factors are also provided for: according to Circular 5/2011 of the Attorney General's Office, Article 318 bis 6 CP2 allows the sentence to be reduced from two to four years

³ In 2021 the Spanish Ombudsman published a monograph on migration in the Canary Islands and one of the aspects that stands out is the arrival of unaccompanied foreign minors and the need to improve the rapid identification of such migrants to ensure their access to rights. The full report is available at <https://www.defensordelpueblo.es/informe-monografico/la-migracion-canarias>.

⁴ The intention to obtain financial gain is considered an aggravating circumstance rather than an element constituting the crime. This broadens the scope of the offence compared to the definition in the Protocol Against the Smuggling of Migrants by Land, Sea and Air proposed by the United Nations and ratified by Spain: "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (United Nations 2000: 2).

when it is considered that the convicted person was seeking their own migration. In addition, if the action is committed for humanitarian reasons, the conduct is not punishable.⁵

At the European level, legislation and soft law documents collectively address the issues of migrant smuggling and unauthorised facilitation. The Facilitation Package of 2002 comprises Directive 2002/90/EC, which establishes a common definition of the offence of facilitating unauthorised entry, transit and residence, and Framework Decision 2002/946/JHA, which sets out minimum sanction rules for crimes under Directive 2002/90/EC. The New Pact on Migration and Asylum (2020) proposed by the European Commission aims to create a comprehensive framework for managing migration and asylum across the EU. It includes measures to combat smuggling networks, enhance cooperation with third countries and strengthen the European Border and Coast Guard Agency (Frontex).

Soft law documents from EU institutions provide further guidance and operational support:

- the European Commission’s EU Action Plan Against Migrant Smuggling (2021–2025);
- Frontex’s Annual Risk Analysis Reports and operational guidelines to inform policy and operational responses to smuggling;
- the Fundamental Rights Agency (FRA) provides guidance on fundamental rights, emphasising the need to protect migrants’ rights in anti-smuggling measures, and publishes reports and opinions on the human rights implications of EU migration policies.⁶

Frontex launches successive sea operations, and currently has three operations deployed in the Mediterranean. One of these is called Irini, in the Central Mediterranean, and according to its official website its aim is the “disruption of the business model of human smuggling and trafficking networks through information gathering and patrolling by planes in the Mediterranean”. One indicator of the success of these operations is the number of arrests of suspected migrant smugglers. The official website reports that 143 suspected migrant smugglers have been arrested as part of Operation Irini, which was launched in March 2020 and will continue until March 2025. At times, the so-called “fight” against human smuggling and border control gains ground in political and media discourse over other issues, such as the lack of detection and attention to especially vulnerable migrants who may potential applicants for asylum or international protection.⁷

⁵ Although irregular immigration is not a crime in Spain, it is important to mention that there are a series of semi-prison containment devices (CIEs and CATEs) for people who are intercepted crossing a border irregularly. For more on this topic, see Diego Boza and D  vika P  rez (2019) or Iker Barbero (2021).

⁶ Since 2018, in a series of reports (the latest was published in June 2023) they put the spotlight on EU Member States’ legal proceedings against civil society actors involved in search and rescue operations in the Mediterranean Sea (for more, see FRA 2023).

⁷ Studies on border police agents point to the presence of two paradoxical perspectives in the discourses and practices of Frontex: border control and humanitarian attention. These two

Expulsions and returns are another central aspect of the response of EU Member States to the arrival of migrants through unauthorised posts. Directive 2008/115/EC of the European Union sets out common standards and procedures for returning third-country nationals who are staying illegally. The Spanish legal framework on expulsions and returns is primarily governed by Organic Law 2/2009, on the rights and freedoms of foreigners in Spain and their social integration. The implementation of these provisions is further detailed in the Regulation of Organic Law 2/2009 (Royal Decree 557/2011). In addition, Spain has agreements with several countries, such as Morocco, Mauritania and Senegal, which facilitate the return of migrants. Studies such as those by José L. Rodríguez-Candela and Elisa García-España (1996) and David Moya-Malapeira (2002) delve into this issue from a legal perspective, whilst studies such as those by Cristina Fernández-Bessa and José A. Brandáriz-García (2016) and Iker Barbero (2023) highlight practical and unforeseen aspects of the application of these regulations.

Additionally, European Union anti-smuggling legislation has often had consequences for humanitarian rescue organisations. The NGO Proactiva Open Arms was accused in 2018 of facilitating illegal immigration after rescuing migrants in the Mediterranean. Their ship was detained in the port of Pozzallo, Italy for almost a month, and legal proceedings were initiated in both Italy and Spain. Helena Maleno, a prominent activist from Caminando Fronteras, faced prosecution in 2017 under charges of human trafficking and smuggling. These charges were based on her communications with maritime authorities to facilitate rescues at sea. Although she was ultimately acquitted, the case highlighted the risks faced by humanitarian workers. In 2019, the Spanish rescue ship *Aita Mari*, operated by SMH, was prevented from sailing to the central Mediterranean for several months due to bureaucratic obstacles and legal restrictions imposed by Spanish authorities.

Another invisible effect of this “fight” against human smuggling policies was highlighted in 2021 by the Italian organisations ARCI Porco Rosso and Alarm Phone, in collaboration with Borderline Sicilia and Borderline-Europe. In a report, they denounced the criminalisation of migrants arriving on Italian shores. The report focusses on the application of criminal law as a functional aspect of border control policy in Italy and radically criticises the criminalisation of border crossings, applied to boat drivers during crossings on the Central Mediterranean route. In the same vein, the United Nations Office on Drugs and Crime recently pointed out in a report (UNODC 2022) that a large number of individuals are being detained immediately upon arrival in Spain via the Atlantic route, accused of illicit migrant smuggling. The report questions the strategy of holding accountable individuals arriving in dinghies as boat captains and members of criminal organisations taking part in human smuggling.⁸

facets coexist and balance the self-image of the police as well as the projection of its image as a European organisation seeking social legitimacy. For further insight into these issues, see Pallister-Wilkins (2015).

⁸ Both reports also question the stated purpose of police operations that theoretically work simultaneously to rescue people in danger at sea and to combat immigrant trafficking. By focus-

Given the absence of official statistics on this matter, the JEPRAN project aimed to identify among the various types of young people in Andalusian prisons those who had previously gone through child protective services as unaccompanied foreign minors. The primary objective of the project was to highlight the challenges faced by Andalusian society in integrating former foster minors of foreign origin and the legal and social crossroads they encounter during their transition to adulthood. The project sought to identify both risk factors and protective factors for this specific group within the prison system. Four prisons in Andalusia were selected for the study (in Málaga, Algeciras, Almería and Granada), as they house the largest foreign populations. The fieldwork was conducted in two phases using both closed- and open-ended questions.

During the first phase of fieldwork, the aim was to identify different profiles of people aged 18 to 30. Particularly notable was the identification of a number of inmates who reported having come to prison directly from the sea, following their arrival on Spanish shores in dinghies. Perceiving indications that the reality described in the aforementioned reports from United Nations and Italian NGOs could also be occurring in Andalusian prisons, the JEPRAN team designed an ad hoc questionnaire to better understand the circumstances under which these detentions were taking place, from the perspective of the inmates.

This article seeks to provide an approach to the situation of individuals in prison accused of human smuggling in southern Spain who arrived via the Western Mediterranean route, based on their testimonies. Another aim is to reflect on the response to this crime, considering the context of the Central and Atlantic Mediterranean routes, where similar situations are being identified.

I start by introducing several theoretical perspectives on human smuggling and ways to address the phenomenon. Following this, I delve into the socio-historical context in which the criminalisation of boat captains in Europe emerged, providing background information on this research. Subsequently, I outline the methodology employed in and an analysis of interviews with young inmates in southern Spain. Finally, I move on to the discussion phase, engaging in a dialogue that synthesises theoretical perspectives with the research findings, ultimately leading me to draw conclusions.

1. Theoretical approaches to human smuggling: Perspectives from organised crime to a moral assessment of the offence

The academic literature on human smuggling can be organised into six distinct approaches: focussing on the organisational aspects and configurations of smuggling networks; understanding modes of border crossing and predicting flows;

sing on the boat captains, these operations may pose greater danger to the people on board. The UNODC report suggests that boat operators often abandon the helm when another vessel approaches in order to avoid identification, thereby increasing the risk of collision.

emphasising migration as an industry and from market perspectives; making historical comparisons of the phenomenon; discussing human rights aspects; and adopting a gender perspective (Baird 2013).

For the purposes of this paper, I will focus on the first and fifth approaches: smuggling networks' organisation and human rights. Whilst the other approaches are important for understanding the phenomenon of human smuggling, these two are most relevant to addressing the situation of young inmates accused of human smuggling in southern Spain.

The first approach suggests that, in the public's imagination and the media, human smuggling is strongly associated with organised crime at the international level. This approach has also been present in academic debates on human smuggling (Mallia 2010; Coen 2011; Triandafyllidou, Maroukis 2012). However, empirical evidence suggests that large international and hierarchical organisations are not typical of smuggling practices. In general, this phenomenon appears to be smaller in scale and more transient than initially expected. These findings give rise to a new perspective on human smuggling – understanding the phenomenon as a social network and a set of temporary alliances that may have hierarchical configurations and local control practices, but not as a complex, transnational criminal organisation (Neske, Doomernick 2006; Maher 2018).

The human rights approach focusses on the tensions and humanitarian costs of prosecuting the crime of human smuggling. The tensions lie between the right to leave a country, especially in situations where the individuals are seeking international protection or asylum, and the impossibility of reaching another country through safe, legal routes. This tension is linked to inflows through unauthorised routes to Europe and the phenomenon of human smuggling. In the absence of safe, legal routes, individuals seeking asylum or international protection use irregular routes, sometimes with the assistance of facilitators. The criminalisation and prosecution of these practices can be considered a barrier to accessing asylum and protection (Wahab 2015).

Also, for the purpose of organising academic scholarship on the topic, John Salt (2000) proposes three ways to approach the phenomenon of human smuggling: a) as a business or b) as a crime and c) the humanitarian responses to human smuggling. This last approach emerged later and points to a moral and ethical debate regarding the phenomenon. It adds an aspect that was neglected in previous perspectives and has gained strength over the years, beginning to appear in academic articles.

In this line, Eamon Aloyo and Eugenio Cusumano (2018) argue, from a philosophical perspective, that under certain conditions and regardless of its illegality, human smuggling would be morally permissible – as long as it is voluntary, does not harm others and is not confused with human trafficking – because it could improve the lives of people undertaking migratory journeys or others who remain in the country of origin. In the same vein, Javier Hidalgo (2016) and Julian Müller (2018) relate human smuggling to the right to asylum and assert that facilitating entry to countries where individuals are not authorised to enter would be morally

permissible when it helps protect the human rights of individuals. Eamon Aloyo and Eugenio Cusumano (2018), however, go further in the argument and point out that even if individuals are not at risk of having their human rights violated, facilitating irregular migration – even if a “reasonable” price is charged for it – would be morally permitted due to the possibility of improving people’s lives. This argument includes economic migrants as well as those eligible for international protection. The authors argue that the line separating economic migrants from asylum seekers is sometimes very thin and does not account for the complexity of the situation of people who migrate. They also emphasise these people’s right to decide, even if they decide to pay to undertake a dangerous journey.

Some studies reveal the complexity of these practices, from the perspective of the smuggled individuals, and invite us to consider other ways of looking at facilitators, beyond the logic that they are mercenary criminals. Studies suggest that sometimes individuals who use facilitators do not recognise them as criminals or see themselves as victims. On the contrary, they have bonds of trust with individuals who are key to making their journey possible (Achilli 2018; Maher 2018). Nevertheless, the various conceptualisations of human smuggling should not idealise the reality of this phenomenon. Their purpose is to provide a nuanced understanding of the diverse contexts and territories involved in facilitating the unauthorised entry of individuals. Within these contexts, power dynamics and instances of violence can manifest in numerous ways. Human smuggling operates outside regulatory frameworks, often stemming from necessity and lacking mechanisms to ensure the protection of agreements or the rights of individuals. In such environments, alliances and trust-based relationships may develop, but they can also lead to instances of abuse and exploitation, as exemplified by the situations encountered in Libyan territory, as we will elaborate on later. Philosophical discussions, as posited by Eamon Aloyo and Eugenio Cusumano (2018), revolve around the moral imperatives that facilitators are expected to uphold for their actions to be deemed morally justifiable. However, practically realising these configurations whilst ensuring all necessary safeguards presents significant challenges.

Despite the possible moral justifications and studies on the various relationships between smugglers and those smuggled, which add complexity to the issue and challenge public opinion about the crime of human smuggling, in practice these acts are legally prosecuted in European countries. Their primary objective is to protect their borders. All efforts of EU member countries in their border areas, whether maritime or sharing a border with non-EU countries, are focussed on this primary objective, even though these strategies may have to coexist with discourse on the protection of human rights, the right to asylum and humanitarian assistance (Franko, Gundhus 2015). In this complex scenario, individuals may assume a dual status that is seemingly contradictory but in line with border control policing logic: they are people who are both a risk and at risk (Aradau 2004).

Given this reality, I now focus on the fine line between being identified by authorities upon arrival as a person migrating to European shores by sea (whether

eligible for asylum or not) and being accused of facilitating the entry of unauthorised individuals into territories and via unofficial routes by operating the boat or assisting in it during the journey. This scenario was not addressed by authors reflecting on the moral evaluation of human smuggling. I address this scenario through the theoretical perspectives presented below.

2. Human smugglers or smuggled persons?

Flavia Patane et al. (2020) provides a historical overview regarding the arrival of third-country nationals on Italian shores,⁹ which helps in understanding the dynamics that lead migrants arriving by sea to be accused of human smuggling. The authors point out that human smuggling in southern Italy has undergone significant evolution from the mid-1990s to the 2010s. Initially, boat arrivals were sporadic and concentrated in the southern region of Sicily, between Pachino and Augusta in the province of Siracusa, with minimal criminal investigations and jurisprudence on the subject. However, starting in 2011, migratory pressure increased considerably, especially after the Arab Spring and the onset of the war in Syria.

The nature of smuggling also underwent significant changes during this period. Initially, the boats mainly departed from Egypt, and smugglers used a main vessel to take migrants into international waters before transferring them to smaller boats near Sicilian coasts. However, the Italian authorities managed to establish jurisdiction over smuggling activities in extraterritorial waters through innovative legal reasoning supported by the Court of Cassation in 2014. This juridic reaction led to new methods to evade detection and minimise the costs and risks associated with smuggling activities. From 2015 onwards, they shifted smuggling operations to Libya and began putting migrants directly onto small boats at the point of departure, bypassing the need for professional crews on the boats. This change marked a significant transformation in the nature of human smuggling in southern Italy, with the migrants themselves taking on active roles in smuggling operations (Patane et al. 2020).

In this context and based on interviews with key figures in Sicily, Flavia Patane et al. (2020) propose that there are different profiles of boat captains: “professional captains”, migrant smugglers operating for payment, and “occasional captains”. Their interviewees suggested that the number of professional captains is decreasing. Within the second category, the authors identified two general subcategories based on the degree of voluntariness of the behaviour. The first subcategory consists of

⁹ In Italy, the offence of human smuggling is regulated by Article 12 bis of the Consolidated Immigration Act (Legislative Decree No. 286/1998). This provision penalises facilitating the illegal entry, transit or stay of people in Italian territory. The penalties associated with this crime vary depending on whether it is committed individually or within the context of a criminal organisation. In the former case, the prison sentence can range from 3 to 8 years, whilst if a criminal organisation is involved, the sentence can be from 5 to 15 years. Additionally, fines of up to 15,000 EUR can be imposed.

those who opportunistically agree to captain or navigate a boat in exchange for a free trip to Italy. They are typically individuals who lack the financial means to pay for their journey to Europe; they would be considered “opportunistic captains”. The second subcategory of occasional captains consists of migrants who captain a boat or hold a compass or GPS device during the journey because they are coerced or forced by necessity to do so: they are referred to as “forced captains”.¹⁰ Although both groups are considered occasional captains, they differ significantly: the former willingly agree to captain in advance, whilst the latter, who pay for their passage like regular passengers, are forced to assume the role of captain under threat, either shortly before departure or once aboard.

Here it is important to explicitly state a distinction already assumed throughout this text: “boat drivers” and “human smugglers” are not equivalents. In the report (ARCI Porco Rosso and Alarm Phone 2021) on the situation in Italy, which was also based on interviews with key agents, a categorisation of different types of boat drivers is proposed, adding aspects that are absent from the study mentioned above: i) “forced drivers”, especially on the route passing Libyan ii) “drivers out of necessity”, referring to situations where the boat has problems because of an inexperienced driver and another skilled person ends up taking command to avoid further problems with the boat; iii) “paid migrant drivers”, individuals who are paid to drive the boat without any further ties to the organization, typically receiving a one-time payment due to their desire to migrate and the need for a boat operator; and iv) drivers from organisations, offering transportation as a service and with no intention of migrating – this category would include those who are intercepted returning to the point of origin, after dropping off the immigrants at the arrival point.

In this categorisation proposed by Italian NGOs, mixed cases also appear, seeking to account for the complexity of situations in which a person may find themselves driving a boat with migrants to Europe. One example is a person who, having paid for the journey and having initially refused to drive the boat, ends up acquiescing out of fear of reprisal for their refusal. The report also points out that strategies to combat human smuggling are focussed on the moment of arrival and punishing the boat captains, whilst there are no records of efforts to address the issue from other possible places, such as the points of departure.

This phenomenon of criminalising boat captains in Italy has been known for years. Since 2013, the association Borderline-Europe estimates that around 3,200 people have been arrested on charges of human smuggling upon reaching Italy’s shores.

¹⁰ These are immigrants in irregular situations who, either out of necessity or coercion, captain the boat or contribute in some other way to the smuggling of other immigrants in irregular situations. According to reports from the United Nations as early as 2016, it has been established that traffickers recruit migrants in transit, transport them to the Libyan coast and keep them in so-called “connection houses” for weeks or months before smuggling them into Europe. In these connection houses, migrants are frequently beaten, and women are sexually abused. Once the immigrants in irregular situations are scheduled for the crossing, they are taken to the beach, usually at night, and boarded onto inflatable or wooden boats. Just before departure, the group of armed Libyans overseeing the boarding selects one or two of them to act as captains and forces them to take the helm of the boat or to navigate.

Flavia Patane et al. (2020) make a point that is key to understanding the accusations against boat captains in Italy. Article 112 of the Italian Constitution establishes that public prosecutors are obliged to initiate legal proceedings whenever a crime is reported. This mandatory rule requires the initiation of criminal proceedings whenever a new rescue or landing of migrants is reported, as this constitutes a report that the crime of “human smuggling” has been committed. As a consequence of this principle of mandatory criminal action, anyone who has participated in human smuggling activities, even if their role is marginal, must also be prosecuted.

In Spain, although there is no similar legal provision that obliges prosecutors to initiate criminal actions in all reported cases, measures have been implemented to combat irregular immigration and human smuggling, such as cooperating with Frontex in border controls and maritime surveillance, operations and raids. These operations have resulted in the detention of boat captains.

Thus, in Spain, the detention of boat captains is a more recent phenomenon. It began to be detected with the increase in arrivals via the Canary Islands in 2020. In the aforementioned UNODC report (2022) on human smuggling on the Atlantic route from Africa to the Canary Islands, this phenomenon is now being documented in the Spanish context. Similar situations to those that occurred in the Italian seas are being described. Based on interviews with key agents, the report highlights that those who organise and profit from the crossings usually do not undertake the journey themselves, but recruit one of the passengers to be captain at the time of departure. This recruitment includes ad hoc agreements for discounts or free travel in exchange for the service. The chosen ones are typically men with experience in navigation or fishing, and there may be shifts to keep the boat sailing at night.

Interviews with law enforcement agents reveal that individuals with Senegalese or Moroccan nationality (coastal countries) are considered suspicious of being traffickers due to their likelihood of having boat-handling skills. Additionally, authorities identify those who steer, use the GPS device or give directions to other passengers during the journey. The fact that they receive a discount or free travel is considered by Spanish judicial authorities as a financial and material benefit, according to interviews conducted for the report (UNODC 2022).

Consistent with what occurs in the Italian context, during fieldwork for the report on the Atlantic route to the Canary Islands, no investigations beyond those related to the time of arrival were found. No cases have been identified where boat captains were considered protected witnesses in investigations aimed at locating higher-ranking members involved in the business of organising boats at the point of departure. However, Spanish prosecutors acknowledge in interviews that boat captains are often not part of an organised criminal group, and if they are, they represent the lowest rung and the most vulnerable piece of the group (UNODC 2022). Testimony from the aforementioned report draws attention to “boat drivers out of necessity”: The boat was lost for several days, and after the death of the initial captain and other individuals due to dehydration, one of those on board took command. Based on the testimony of other individuals from the boat who confirmed that he

was the captain, that person faced charges of human smuggling with aggravating circumstances and more than 20 years in prison.

Furthermore, the cited report (UNODC 2022) refers to another aspect not documented in reports and studies of the Italian context: cases of self-organisation for migration. These are instances where groups of individuals decide to pool their money in order to purchase a boat and undertake the journey independently, without an organisation or individual seeking profit from it.

These precedents motivate and contextualise the present investigation on the Spanish peninsula. This study approaches this phenomenon using the testimonies of a group of young people accused of human smuggling and held in a prison in Almería. It follows with a reflection on the topic, integrating the field findings with theoretical perspectives and the context identified in Italy and the Canary Islands.

This is a topic that continues to be gradually uncovered in Spanish territory. Recently, lawyers working on immigration issues have begun to notice the emergence of this phenomenon. When this article was being written, an analysis of court judgments was posted on the blog of the OCSPI (Observatory of the Crime control system towards Immigration) by Daniel Arencibia, a lawyer working in the Canary Islands. It focusses on judgments under Article 318 bis (Arencibia 2024). Based on a recapitulation of all publicly available judgments on *poderjudicial.es*, the lawyer points out that between 2021 and 2023, there were 459 individualised accusations filed by the Public Prosecutor's Office in 316 judgments from the Spanish provinces most affected by maritime migration.

In line with what was identified in the Italian context (Patane et al. 2020), the lawyer emphasises the fragility of the evidence on which the accusations against boat captains are based. The accusations were made by witnesses selected by the police and offered temporary residence and work permits under Article 59 LOEx7 if they denounce another traveller. Oral trials are held, in most cases without the presence of travellers other than the accused, leaving the defence with no opportunity to question any witnesses. Another noteworthy point is the high degree of conformity in these cases, reaching 98% in Murcia and 75% in the Canary Islands.

In analysing the judgments, Arencibia concludes that only in Almería are there cases of “taxi boats”, where the boat captain returns with the boat after dropping off the people on the beach. In the Italian classification proposed by Flavia Patane et al. (2020), the captains would be called “professionals”, having no intention of migrating themselves. In the other provinces, the most common cases are those where the accused is recognised as seeking their own migration.

3. Methodology

The approach of this research emerged unexpectedly during the fieldwork conducted for the JEPRAN project. The four Andalusian prisons with the most registered migrant

individuals were selected for the fieldwork: Alhaurín de la Torre (Málaga), Botafuegos (Algeciras), El Acebuche (Almería) and Albolote (Granada). To access the prisons, relevant authorisation was requested from the penitentiaries and the ethics committee of the University of Malaga (CEUMA). The young people's participation was voluntary. They were informed about the project, its voluntariness and its objectives, and they signed their informed consent before the questionnaires were administered during the month of October 2022.

The first specific objective of JEPRAN was to classify the incarcerated youths into categories more complex than just nationals and foreigners. Achieving this first objective required some methodological creativity because the data available from the penitentiaries only classify inmates by age and nationality, making it impossible to differentiate between, for example, those foreigners who migrated alone and went through the child protective services or those who did not live in Spain before entering prison. The methodological strategy used to locate and categorise the different profiles was to request a list with the names of all inmates aged 18 to 30 years old (including nationality, age and where they were located in the prison) in the selected Andalusian prisons, and to carry out the fieldwork in two stages: the first consisted of a very short questionnaire (questionnaire A, lasting 2 minutes), where all the young foreign inmates in each prison were asked basic questions regarding their trajectory: entry route into Spain, age of arrival in Spain, whether they came alone, whether they lived in Spain when they were imprisoned and if they would be interested in participating in a second phase of the research, answering a longer questionnaire about their life trajectory (questionnaire B). The sample of participants for questionnaire B was selected based on this initial classification.

During the profiling process in the Algeciras prison (Cádiz), we identified a small number of young people who claimed to have entered Spain by sea, when they were already of legal age and who did not live in Spain at the time of their arrest: they had been detained upon arrival. During the fieldwork in the next prison (Almería), this profile began to repeat itself. Prison officials in Almería also emphasised in conversations during the fieldwork that the prison was full of Algerians for the crime of human smuggling. This finding corroborated the aforementioned report, which had just been published by UNODC (in July 2022) about the Atlantic route, where a large number of recent arrivals were reported to be in prison for human smuggling by sea. A specific questionnaire (questionnaire C) was designed for this group of young people in Almería, in order to delve a little deeper into this profile.

The questionnaire consisted of 94 questions, some open-ended, divided into four blocks:

1. Migratory journey and arrival in Spain.
2. Contact with the police and entry into prison.
3. Experience with the justice system.
4. Situation in prison.

The closed-ended questions were analysed using the software programme SPSS 28, mainly to provide descriptive statistics given the small number of cases,

statistically speaking. The open-ended questions were analysed using the qualitative analysis support software ATLAS.ti. Thematic content analysis was used to identify different situations related to several topics, such as life in the country of origin and motivation to migrate, migratory journey, moment of arrival, basis of the accusation, assessment of the lawyer's work and the court hearing.

One difficulty that must be mentioned is that the fieldwork team did not speak the language of the young interviewees.¹¹ Most of the inmates matching this profile spoke only Arabic. For this reason, it was necessary to rely on other inmates as interpreters. Being particularly concerned that the presence of a translator could interfere with the interview, we allowed each inmate to choose the person who would help them.

It is important to mention that when administering the questionnaires in prison among the different profiles of young people, this specific group presented significant differences compared to the others, apart from the language issue. The fieldwork team sometimes encountered other young people who also did not speak Spanish and also needed the help of other inmates as interpreters, but the main difference was that this group was the most bewildered. During the interviews in prison, one can encounter diverse situations, requests of all kinds from inmates and a desire to speak about topics beyond what is specified in the script. This particular group, however, showed a particular bewilderment, requested help more frequently and urgently and produced the only two cases in which an interviewee mentioned contemplating suicide.

Out of the 444 young foreign inmates identified in the selected prisons, we found 53 (12%) who had been taken to prison immediately after their arrival by sea on the Spanish coast, without residing in Spain before entering prison. It is important to note that we found these numbers only among people aged 18 to 30, because that was the age range chosen for the project's objectives. We do not know the number of people over 30 years old and therefore the total number of people detained in these prisons under the same circumstances.¹²

The second specific questionnaire for this profile of young people (C) was only offered to the young inmates in the prisons of Almería and Granada. During the fieldwork in Algeciras, despite the presence of this group being identified by questionnaire A, their importance had not yet been recognised and a questionnaire specifically for them had not been designed. All of the 38 cases detected in Almería and Granada agreed to participate in the second phase of the research by responding to questionnaire C.

¹¹ That was not generally the case with the other types of interviewees, who typically had been in Spain for some time and spoke Spanish.

¹² Those who had their sentence substituted with expulsion under judicial decision, as set out in Article 57 of Organic Law 2/2009, on the rights and freedoms of foreigners in Spain and their social integration, were also excluded from the sample.

Table 1. Number of young prisoners who arrived by sea

Prison centre	N
Alhaurín de la Torre (Málaga)	0
Botafuegos (Algeciras)	15
El Acebuche (Almería)	36
Albolote (Granada)	2
Total	53

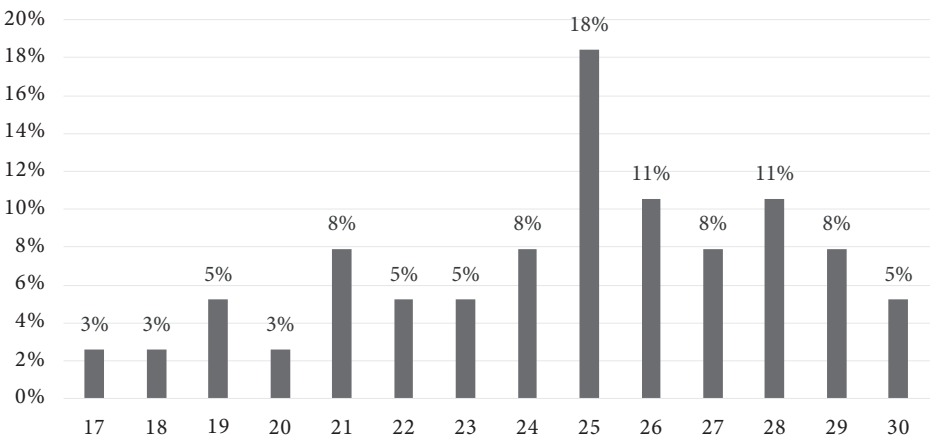
Source: Own elaboration.

4. Results

4.1. Profile of interviewees

The majority of these youths were between 25 and 28 years old (48%) and were of Algerian origin (89.5%), with the remaining being originally from Morocco (10.5%). The presence of one minor, aged 17, (see Figure 1) is noteworthy among individuals within the prison system, which is reserved for adults (+18) according to Spanish legislation. He was not the only one who claimed to have arrived as a minor. In addition to their current age, we also asked at what age they had arrived in Spain. In one more case, an individual who was already 18 at the time of the interview stated that he had arrived when he was 17 years old.

Figure 1. Age of young people in prison and accused of human smuggling



Source: Own elaboration.

Regarding life in Algeria, we identified four groups that value life in their country of origin differently and pointed to different motivations for migrating: the first and largest group referred to a difficult life in Algeria due to the hardships they face with their family. The migratory project of this first group was linked to financially assisting the family left behind in their home country in a difficult situation:

In Algeria, I was struggling to get by with my two younger brothers. I didn't have a job, so I came to seek a future. My parents don't work; they can't pay the rent. I haven't studied more because I had to work. (Respondent P6-8)

The second group pointed to the lack of opportunities, work or rights in Algeria and came to Europe in search of better living conditions:

I studied high school. I went to the Economics University for two years. I couldn't find work. In Algeria, even if you study, there are no good jobs. I wanted to come to Europe to improve my life. (Respondent P6-7)

The third group related their migration to family reunification:

[I came] to live in France with my brothers. My father is also in France. (Respondent P6-4)

And the last group, the smallest, claimed that they needed to leave in order to seek health treatment or to flee from violent situations:

[Life in Algeria was] very tough: my mother is sick and my father is in jail. My brothers depend on me. I had to leave for fear of being killed by gangsters who had a fight with my father. (Respondent P6-2)

I have a liver disease and I came to try to get treatment here. To receive better medical care because the situation in Algeria is difficult. (Respondent P6-20)

The three interviewees of Moroccan origin are in the second group: they pointed to the lack of opportunities in Morocco and the search for a better life.

4.2. Migration route and arrival time in Spain

All of them claimed to have left their country of origin and arrived directly at the Spanish coast through the Western Mediterranean route. Most of them arrived in Europe for the first time (81.6%), whilst the rest (seven cases) came for the second or third time. All had arrived in 2021 or 2022. Their previous arrivals were also by sea between the years 2015 and 2021. Three of the seven who had already come were expelled, and the rest claimed that they decided to return to their country due to various circumstances, especially family matters such as the death or illness of a parent. After these circumstances, they decided to embark on the journey to Europe again.

In the questionnaire, we inquired about the characteristics of the journey. The watercraft were mostly speedboats and inflatable boats (69%), and the number of

people on board varied from 3 to 17 people, although between 10 and 15 people were the most common responses. When asked if they knew anyone on the boat, the majority stated that they did not, although 26% claimed that they did; in these cases such individuals were usually friends, with only one case involving a family member. The majority (71%) claimed that no-one was waiting for them in Europe.

Regarding the moment of arrival, they described three situations: i) being intercepted at sea by the Civil Guard upon arrival, ii) being rescued by Salvamento Marítimo (Maritime Rescue) at sea and iii) being intercepted on the beach or shortly after leaving the beach by the Civil Guard, just after arrival. Among the cases of interception by the Civil Guard at sea, the two interviewees in the Granada prison stated that they changed boats during the journey, which led to detention because drugs were found on the second boat. In Almería, two other cases were different from the rest. The respondents claimed to have been intercepted when they were returning with the boat; these are the cases that could be identified as “taxi boats” or drivers who did not intend to migrate.

There were accounts of problems with the boat upon arrival: one young man stated that they swam to shore because they had to abandon the boat, and the Civil Guard intercepted them on the beach:

There was an accident on the boat, and it sank. We arrived swimming to the beach. When we arrived at the beach, the Civil Guard was waiting for us and took us away. (Respondent P6-28)

In another case, the boat had engine problems and a Moroccan fisherman found them and saved them:

We spent two days at sea. A Moroccan fisherman saved us. He took us to the beach, and before arriving the Civil Guard caught us. [...] The Algerians accused the Moroccan and me. Everyone on the boat says that the Moroccan saved us, but only two said that we were driving [...]. Two of those on the boat said it was me. The Algerians who were driving went free. The Moroccan who saved our lives and I stayed [were detained]. (Respondent P6-30)

In some cases, they pointed out that the Civil Guard was violent upon arrival and hit them:

The Civil Guard intercepted us and started hitting me (shows the photo on the prison ID card with bruises on his face). No-one told me anything. Other Civil Guards different from those who hit me went to court and said that I was driving [the boat]. They gave me some painkillers. I didn't report it because I didn't know anything. I wanted to, but I didn't know how to do it. (Respondent P6-1)

Five Civil Guards hit me at the port asking who was driving. In police facilities, no. There was food, but little. (Respondent P6-30)

Regarding the assistance received upon arrival, they report two situations: the first occurred in almost half of the cases, where the migrants received assistance

from the Red Cross – clothing, food and guaranteed medical attention – and later were accused and taken to police facilities.

They provided us with medical assistance, clothes and food from the Red Cross for two days [...]. They asked if we were okay and attended to us, but they didn't explain much. I only had an interpreter when they took us from the Red Cross to the police, who said I would have a trial and a lawyer – that's all. (Respondent P6-11)

In more than half of the cases, they claimed not to have received any type of attention upon arrival. They were taken directly to the police facilities, even if their clothes were wet, they were barefoot or they had health complaints. In a few cases, medical attention was offered once they were already in police custody.

No-one saw us; they took us to the port barracks for 48 hours and then took us to the judge and brought me to prison. I was taken to court barefoot, until they gave me flip-flops in prison. (Respondent P6-2)

Directly to the police detention. I hadn't changed my clothes. I slept in the cell for three days. With the same wet clothes. (Respondent P6-8)

No-one [attended to us upon arrival]; they took me from the water to the cell in police facilities, and then I was able to see a doctor. Then to the judge and to prison. (Respondent P6-12)

When asked how the opportunity to come to Spain arose, the majority referred to a friend, acquaintance or, to a lesser extent, family member who put them in contact with people who organise boats leaving their country of origin for Europe. They pointed out that it is easy to get in touch with such people:

It's very easy: you meet someone, and they tell you "We're leaving tomorrow." You pay today and you're off. (Respondent P6-16)

Another group claimed that they organised the journey themselves, pooling money to buy the boat and undertake the journey independently:

I myself started collecting money with other people, and we organised everything. We were a group of neighbours, and we set sail. It was better to die than to keep living there. The poor are worth nothing in Arab countries. (Respondent P6-14)

One individual claimed to have taken advantage of the opportunity to access a boat because he was on the beach at the time. Another said he was approached in a cafeteria and offered 1,000 EUR to drive the boat, which he accepted:

I was in a café, and some people told me we were going to Spain. They paid me a little to come. They convinced me to come. They told me they would give me 1,000 euros. I needed the money, and I accepted. Now I'm here. My family has no money. I don't even know where I am anymore. [...] We came from Algeria to here in three hours. Very fast. I dropped off the two people and went back for the money. And the Civil Guard stopped me, alone. They asked me if I was carrying immigrants, and I said yes. It was the first time, and I told the truth. (Respondent P6-8)

This is testimony from a paid boat driver who claimed to have no further relationship with those who organise the boat trips.

The relationship between not paying for the journey and driving the boat seems clear: of the five people who claimed not to have paid for the journey, four were driving the boat. They related different motivations for doing so; one claimed to have been forced:

The mafia forced me. They pointed a gun at my head and threatened to shoot me. They forced me to take the helm of the boat. (Respondent P6-27)

Another respondent claimed to have done it for money (above testimony from Respondent P6-8), whilst the other two took turns driving the boat and claimed that there was more than one captain:

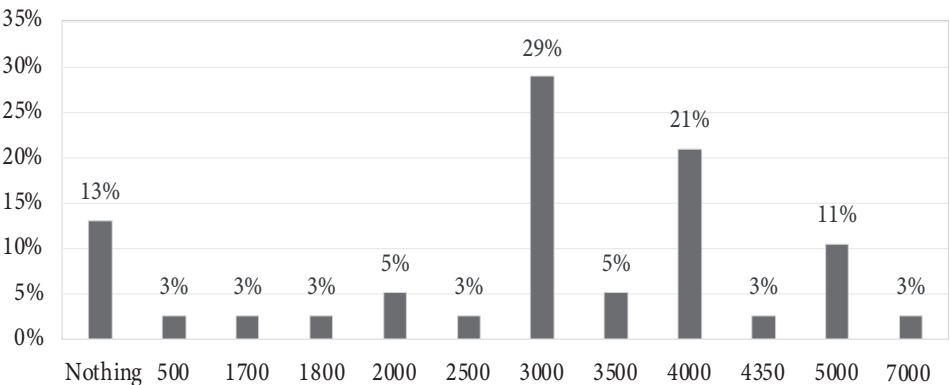
I have a video that shows I'm not the driver. It was a collective effort. All 11 of us drove; we bought the boat together. (Respondent P6-23)

The only interviewee who claimed to have participated in driving the boat and who paid for the journey indicated that he helped with the GPS because the boat had problems and the driver was inexperienced. He knew what to do and acted to avoid further problems and reach the destination:

I helped with the GPS. The person driving had trouble handling it, and I helped because I know about these things. (Respondent P6-4)

Apart from these interviewees who clearly claimed to have driven or helped drive the boat, the most common testimony was that they simply paid for the journey and did not drive the boat. The majority claimed that they had paid to come, either by contributing money for the boat or paying a third party. The amounts ranged from 500 to 7,000 EUR, although most responses were concentrated between 3,000 and 4,000 EUR.

Figure 2. Amount paid to board the boat



Source: Own elaboration.

When asked why they were accused and detained, some respondents claimed not to know why it was them and not others on the boat with them:

I don't know, I don't understand it. (Respondent P6-1)

However, the majority claimed to have been accused and detained based on the testimony of other people on the boat with them, who pointed them out as the boat driver. Some explained that this is because the police promise witnesses access to legal documents for legitimate residence in Spain if they tell the truth and accuse one or more people on board, and they agree among themselves to select one as the driver.

Because the driver says it was me, in the end the real driver gets off, and I go to prison. But I have the video that shows I didn't do it. (Respondent P6-11)

They grabbed me and another person. They use some witnesses from the boat with whom I had problems during the journey. They told the witnesses that they would give them papers if they told the truth. (Respondent P6-18)

Three people accused me of driving the boat, of being the captain. (Respondent P6-27)

Two cases from the Granada prison seem peculiar: the interviewees claimed that the arrest occurred under the same circumstances, when they changed boats during the journey and in this new boat were drugs. They claim to have been intercepted at sea, arrested and charged with drug trafficking, although they had paid for the journey to migrate.

The two who came with me are in prison here in Albolote, accused of drug trafficking. They themselves confessed to bringing drugs and already living in Spain. They came to meet me halfway. The police said they had to send me to the judge, but I told them I was innocent, and the boys told them too. The only evidence they have is that I was there. (Respondent P6-37)

They caught about four people, including me. I don't know where the others are. Two of those who came with me are here in Albolote. I don't know why they caught me. They only found drugs floating near me. (Respondent P6-38)

4.3. Detention and entry into prison

At the time of arrival, the majority (87%) claimed not to have been informed of their rights, which is consistent with the information that many did not receive first aid or attention from the Red Cross. More than half (52.6%) claimed not to have had an interpreter whilst in police custody, which would be a violation of Article 520 of the Criminal Procedure Law in Spain.

They didn't talk to me because nobody understood me. (Respondent P6-2)

On the other hand, none claimed to have been in detention for more than three days, which is in compliance with the aforementioned legal article. It was not

uncommon for them to indicate that they were accompanied by one or more fellow boat passengers in the holding cell (52.6%) or in prison with a fellow boat passenger (39.5%).

The treatment by the police during detention was generally described as “good” or “normal”, although there were references to mistreatment, insults and even physical aggression.

Only one day [in police custody]... They hit me and took my money. They didn't give me food, just a muffin. (Respondent P6-10)

This is the first time. It's very difficult, very tough. The Civil Guard treats you very badly. (Respondent P6-28)

Other respondents emphasised that they were not treated badly, but it was an especially tough experience because they were not spoken to, they could not make themselves understood and they did not know what was happening or why they were there.

Everything was very fast, and I didn't understand anything, not even why I was accused. (Respondent P6-27)

Locked up... It was tough because I didn't understand what was happening. (Respondent P6-20)

4.4. Experience with the justice system

In six cases, the respondents claimed not to have seen a judge before entering prison, although others affirmed having seen a judge and an interpreter then. However, having an interpreter does not necessarily mean they were able to understand what was happening. In general, the testimonies suggest that either they were unable to explain themselves during the hearing with the judge, they did not receive assistance from the interpreters to do so, they did not understand what was happening or they simply did not understand anything. Some mentioned feeling physically unwell, experiencing pain or being confused because they had just taken a difficult journey. In some cases, they understood that they would spend only a few days in prison and would see the judge again, but months had passed by the time of the study.

I couldn't defend myself; the translator told me to be quiet and that they would bring me back in 15 days. (Respondent P6-2)

I cannot believe that I'm here [in prison]. When I entered here, I cried. I didn't think I was going to end up in prison. I didn't understand what was happening [during the hearing with the judge]. (Respondent P6-21)

I was feeling bad and medicated, because of the trauma of coming here... I was confused, I couldn't defend myself. I came here to seek a better life. A 19-year-old boy wouldn't drive a boat with 10 people... I was just a normal guy working, in one year of work I couldn't learn to drive a boat. (Respondent P6-11)

I didn't understand anything. I didn't know who the lawyer was. It's been three months since I came here, and I haven't spoken to anyone. (Respondent P6-23)

I didn't have a lawyer. I only went to a small place at the court room, but I didn't speak to anyone. I would have liked to speak to the judge. (Respondent P6-25)

I didn't understand anything because of the language. Here in Spain everything is different, I didn't even know what a judge was like here in Spain. (Respondent P6-34)

The majority (60.5%) had a court-appointed lawyer,¹³ but three individuals (7.9%) claimed not to have had a lawyer before entering prison. Additionally, nearly half (42.1%) stated that they were unable to speak with their lawyer before the court hearing. When asked to assess their lawyer's work during this phase of the proceedings, the majority stated that they performed very poorly or poorly (65.8%). When queried about the reasons for their response, some replied that they cannot say because they did not understand what was happening. Some asserted that the lawyer did nothing to defend them, pointed out that they could not present the evidence they claim to have on their mobile phones or said that they were simply advised not to testify. Others based their assessment on their current relationship with the lawyer:

He hasn't come to talk to me, I haven't seen him again. (Respondent P6-9)

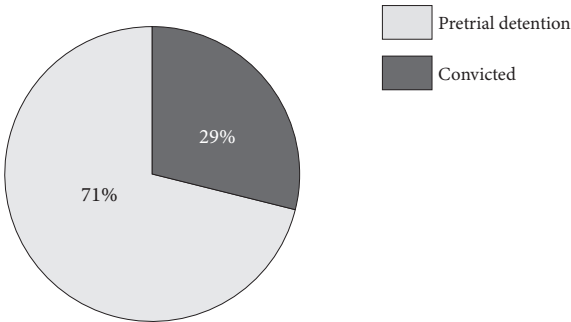
Finally, others evaluating the lawyer's work as poorly did so based on the outcome so far:

Others have already been released from prison and I haven't. (Respondent P6-8)

Those evaluating the lawyer's work positively cited reasons such as positive outcomes of reduced sentences or appeals, or fighting for them and keeping them informed about their situation.

The majority were in pretrial detention at the time of the interview.

Figure 3. Legal status



Source: Own elaboration.

¹³ Legal aid in Spain is managed through Bar Associations (Colegios de Abogados), ensuring that individuals who cannot afford legal representation receive it. In criminal matters, court-appointed lawyers (*abogados de oficio*) are assigned to detainees and defendants to provide comprehensive legal representation. For migrants arriving by boat, specialised lawyers should assist with asylum and immigration proceedings, offering legal counsel and support.

Of those in pretrial detention, the majority claimed to have been arrested and charged with human smuggling, whilst only a few, the two cases from Granada, were accused of drug trafficking.

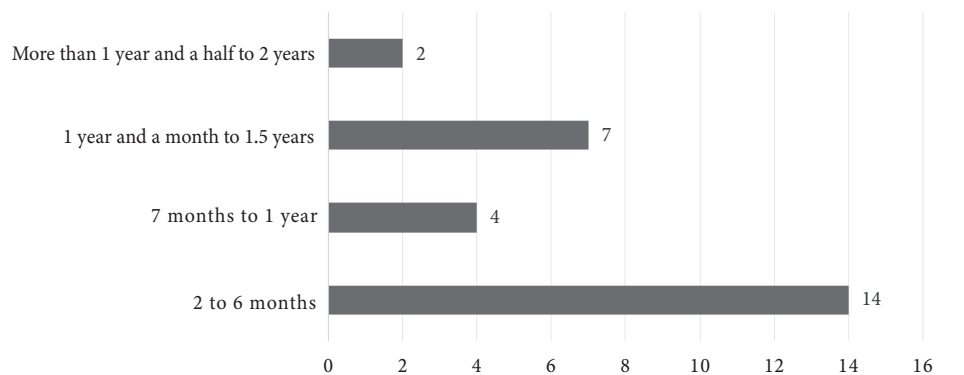
Those who were convicted (11 cases) were sentenced to between two and a half to six years. In all cases, they were convicted of human smuggling. Out of the 11 convicted individuals, only two accepted a plea bargain.

Responding to the closed questions regarding their experience in court, the interviewees claimed to have had an interpreter and a lawyer. The majority also claimed to have understood what happened in court. In comparison with the accounts of the hearings before entering prison, the trial seems to have more guarantees, or they are in better condition to understand what is happening.

4.5. Situation in prison

Among those in pretrial detention, the majority had been detained for between two and six months.

Figure 4. Time in pretrial detention



Source: Own elaboration.

We asked both pretrial detainees and convicted individuals about their contact with their families. The majority cannot communicate with their families, most frequently because they do not have money. They claimed to have only been able to phone them when entering prison. A few others said it is because they lost their phone numbers and can no longer make contact. Some are able to talk to their families, but only rarely due to lack of money. Although 47.4% claimed to have contact with their families, in most cases it is minimal.

It's been three months since I talked to them because I don't have money. (Respondent P6-1)

Twice a month, when there is money. With €5 I can talk for 8 minutes. (Respondent P6-12)

It's been four months since I talked to my family. My father has died, and I don't talk to my mother. And she doesn't know if I'm alive or dead. (Respondent P6-26)

We also asked if they worked in prison. The majority (57.9%) claimed to work in prison, but in all cases (including the convicted individuals), these were voluntary assignments (in the cafeteria or as cleaners). This indicates that they have no income in prison, which is related to their inability to pay for calls to their families.

4.6. Final comment

At the end of the questionnaire, we asked if they wished to add anything else. This was an open field where they could say whatever they like. In most cases, they asked for help in getting out or proving their innocence, or they claimed to have no lawyer, no money or anything. Among those asking for help were the two individuals who mentioned contemplating suicide. Such statements were not recorded in any of the other questionnaires from the second phase (questionnaires B and C), from any of the respondents in all four prisons visited (total number of questionnaires from the second phase: 230). This type of young person was especially affected by their entry into prison. Whilst not directly asking for help, they commented on their situation and indicated that they came seeking a better life and now find themselves in prison with nothing. A few spoke of future plans: finding a job, starting a family or going to other places in Europe.

Our country hasn't treated us well. I come here and see myself the same. If it were good there, I wouldn't have come. And look where I am. (Respondent P6-7)

I want help to show that I am innocent and that I shouldn't be here in prison. (Respondent P6-4)

[This is] the first and the last time I'll come. I want to go back to my family. Why don't they let me out? I didn't know anything. If I had known, I wouldn't have come. (Respondent P6-8)

I don't have money. I only eat what's on the tray [cannot afford to pay for other types of food]. Please help. I want to go back to my mother, and if I can't get help I'm going to commit suicide. (Respondent P6-26)

Any help you can give me, please. My parents are sick, and they have nothing to eat. I am thinking of committing suicide. Being sentenced is the same as being dead for my mother. I want to be expelled to my country and never be able to come back. It's hard to have hope when you see others being sentenced to four, five or seven years. That's a long time. (Respondent P6-30)

5. Discussion

The questionnaires completed by young detainees in southern Spain and accused of human smuggling allow us to approach this phenomenon for the first time in the specific context of the Western Mediterranean route and from their perspective. This initial approach to this group of young people resonates with the descriptions in studies and reports on the phenomenon of boat captains being detained upon arrival via the Atlantic route to the Canary Islands and the Central Mediterranean route to the Italian coasts. Identifying this group on another route to Spain allows for further reflection on the fine line between being identified as someone who migrates from their country via unauthorised maritime routes and being accused of human smuggling.

In line with studies indicating that the phenomenon of human smuggling usually does not involve large international organisations, but rather social networks (Zhang 2008; Maher 2018), the respondents reported that in Algeria they had contacts, through acquaintances or friends, to someone organising a boat to Europe. In some cases, they reported embarking on a joint project, where money was pooled to obtain a boat and travel independently, without the need for a facilitator charging for the boat. These scenarios were also observed on the Atlantic route.

Based on the responses, it cannot be affirmed whether or not the respondents are eligible for international protection; this would require a much deeper interview. The responses of the young people in prison regarding life in the country of origin and the motivation to migrate are mostly related to economic problems and the need to help their families. From a moral perspective, as proposed by Eamon Aloyo and Eugenio Cusumano (2018), individuals facilitating the arrival of such people would be engaging in morally permissible activity, even if they charge for the service, because they would be contributing to improving the living conditions not only of the person undertaking the journey but also of their family members receiving help in the country of origin. This improvement in conditions can have very important implications and may even determine between life and death when it comes to access to medication or food in more extreme situations. Thus, these authors question the stance of others, such as Javier Hidalgo (2016) and Julian Müller (2018), who consider morally permissible only the action of facilitators in cases where the human rights of the migrating individuals are in danger.

This group of authors reflecting on the limits of morality in the crime of human smuggling did not consider the possibility that the accused may be the very same individuals seeking to migrate (whether they are eligible for international protection). It can be assumed that under these circumstances the activity would be permissible from a moral standpoint, if we adopt the perspective of Eamon Aloyo and Eugenio Cusumano (2018), as it mostly involves a group of young people seeking to improve their living conditions and those of their families and who, due to various circumstances, end up detained and accused of human smuggling.

Regarding the circumstances of the accusation, Daniel Arencibia's analysis of the sentences suggests that the case in Almería would be different from the others, where "taxi boat" cases are identified and arrests occur when the boat drivers are returning to Algeria. However, these cases were not the majority of those described by the young people in the prison of Almería in October 2021. Most of the surveyed young people claimed to have been intercepted upon arrival, along with other passengers on the boat. They also claimed to have been accused by fellow passengers on the boats.

The basis of the accusation is very fragile and in many cases relies on witnesses, as also described in Italy and in the UNODC report in the Canary Islands. The motivations of the witnesses identified in the context of other routes (becoming legitimate residents) also emerge in the accounts of the young people in Almería. A peculiar situation emerged in the prison of Granada, which was not identified on other routes: some people accused of drug trafficking claimed to have paid for the journey and had to change boats along the way. These cases deserve further analysis as they are residual in this context, and it was not possible to obtain more detailed information about them.

Apart from the majority of cases described by the young people in Almería, in which the accused claimed to not be part of a criminal organisation or to have captained the boat, but to have paid for the journey, there are accounts of circumstances that led some to take the helm or assist in steering the boat. These are also in line with those described in the Italian and Canary Island contexts. Several of the previously mentioned scenarios can be identified: becoming occasional captains because a) there were problems with the boat, b) because they were forced, c) because they were offered money for it and had no intention of emigrating (taxi boat) or d) because they all took turns, as it was a joint venture and there was no leader.

One peculiar testimony worth highlighting is from a young person in the Almería prison who recounted being rescued by a fisherman when they encountered problems with the boat. That person ended up being arrested and accused of trafficking after being intercepted off the coast of Almería, along with the storyteller. Considering the accounts presented in the three routes to Europe, it seems clear that there is a range of possibilities and circumstances that can lead a person to be in charge of a boat, making it a much more complex scenario than the direct relationship between captaining the boat and being a human smuggler. This reflection leads us to consider that it is not easy to answer the question provocatively asked in the title of this text.

It is evident from the testimonies of the young people in the Almería prison regarding the moment of their arrival that investigation of the crime takes precedence over the need for first aid. There are even accounts of police violence in this context. Over half of the respondents claimed to have received no attention and to have been taken directly to police facilities, even if they were not in a condition to do so: barefoot or with wet clothes and having just arrived from a dangerous

journey. These practices described by the incarcerated youths bring to mind the discourses of policing presented in studies involving Frontex agents in Europe (Franko, Gundhus 2015; Pallister-Wilkins 2015). The coexistence of humanitarianism and control at the discursive level practically implies that at times (or at all times?), one aspect prevails over the other. It is clear that border control, crime prosecution and risk analysis weigh more heavily in the balance of police actions at the time of arrival.

An aspect that draws attention among the cases reported in Almería is the presence of minors detained at the time of arrival as boat captains. On two occasions, the interviewees claimed to have been minors at the time of arrival, yet no-one identified them as such. The issue of age determination is complex and has implications regarding unaccompanied foreign minors (Spanish Ombudsman 2012), who tend to migrate near the age of majority. We cannot assert that the two declarants who made such statements were indeed minors, but there were certainly reasons to doubt, as they were very young and undocumented individuals. Similar cases were not identified in reports and studies addressing this situation in other routes, but it is conceivable that minors may not be identified and sent to prison as adults in other parts of the Spanish and European territories.

Apart from the aspects related to the journey and the various configurations around the figure of the boat captain, the narratives of the young people in prison point to important issues of justice concerning this profile. The testimonies of the youths regarding their experience with justice indicate that as a group they are particularly uninformed and confused regarding their legal situation. Most of them were in pretrial detention and did not understand what had happened, making it clear that they lacked information, and in some cases had no contact with their lawyers.

The situation in prison is especially complicated due to the language barrier and the lack of resources and access to work in prison, resulting in a lack of contact with their families. Similar cases were detected by the ARCI Porco Rosso and Alarm Phone report (2021) in Italy. The free comments at the end of the questionnaire highlight the vulnerability of these young people, who stand out from other profiles in prison due to their confusion and lack of guidance.

Conclusions

In this paper, we aimed to delve into the issue of human smuggling and its relationship with the detention of individuals upon arrival on European territory via maritime routes and unauthorised entry points. This phenomenon has been mapped in various entry routes to Europe, specifically the Central Mediterranean route to the Italian coast and the Atlantic route to the Canary Islands. In this context, both non-governmental organisations and international bodies have noted a rise in the number of individuals detained and accused of human smuggling in

recent years. There are also indications that the migrants who have paid for their journeys, rather than members of the criminal organisations behind these trips, are being punished with prison sentences.

Against this backdrop, a significant number of young people were unexpectedly found in a prison in southern Spain (Almería) having been detained shortly after irregularly arriving via the Western Mediterranean route. The administration of a questionnaire with open-ended questions allowed us to access this reality from their perspective. The testimonies largely echoed those gathered from interviews with key actors in the Canary and Italian contexts. The various circumstances surrounding the moment they took control of the boat and the police strategies of accusation seem to be repeated in different territories.

Regarding access to justice, few guarantees are also notable in all three territories. The fieldwork conducted in the prison of Almería allows us, for the first time, to delve into the situation of these people when they are still in prison. The lack of communication with families and lawyers and the language barrier make this group especially vulnerable, as reflected in the final comments of the questionnaire, in which the young people expressed themselves more freely.

Whilst it is not possible (nor is it our goal) to determine from their accounts whether they are guilty or innocent of the crime they are accused of, it is possible to identify that they are particularly vulnerable to control and justice institutions. Many of them showed confusion and uncertainty about their situation and did not understand why they were in prison. Claims that they had not had a lawyer or seen a judge before being imprisoned point to two serious possibilities: that the minimum legal requirements for the rule of law are not being met or that those involved were unaware that they were in the presence of their lawyer or a judge, despite all legal procedures being followed. The seriousness of the situation is evident, whatever the reality may be.

An important aspect is the presence of people in prison who claim to have arrived as minors. There are indications to suggest that prison is being used as a response to the arrival of migrants in Spain, and in some cases it is unclear whether they are minors. It is unknown whether this is an invisible reality in other territories, nor how many minors have been accused of human smuggling and are serving time in a juvenile correction centre. Further research in this regard is essential.

Finally, much remains to be investigated on this issue. Regarding the Western Mediterranean route, it would be advisable to also investigate from the perspective of key actors in the criminal justice system. In both Italy and the Canary Islands, interviews with these key actors have shown that, although boat drivers have a residual role in the crime of human smuggling, they are pursued by the justice system. In some cases, mitigating factors are applied because it is recognised that they themselves seek to migrate.

With all that has been presented, it is clear that it is possible for a person who migrates by sea (a smuggled person that may even be eligible for international protection or refugee status) to end up accused of human smuggling in European

prisons. Here, the idea put forward by Claudia Aradau (2004) materialises: people at the borders can be at risk and, at the same time, be seen as a risk by the authorities guarding the border areas.

Declaration of Conflict Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

This article presents part of the results of the R&D Project P20-00381-R, named JEPRAN (Former Foster Youths in Andalusian Prisons). The project was funded by the Regional Government of Andalusia under the competitive call Retos 2021–2023.

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