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Detention in the 10 New Member States

A Study of Administrative Detention of Asylum Seekers and Irregularly Staying Third Country Nationals in the 10 New Member States of the EU

RESEARCH SUMMARY

The context

Across Europe, at any given moment, thousands of foreigners are detained while they await removal or a final decision on their asylum application.

Migrants in detention are often extremely isolated, forced to live in difficult conditions and, at times, deprived of essential services. As access to detention centres is usually restricted, public awareness of the conditions in which migrants are detained is often very limited.

In this context, the work of NGOs, who provide essential services to this population, raise awareness of their plight and lobby for improved treatment in line with human rights standards, assumes great importance.

The Project

This project brings together NGO partners, from all the states that acceded to the EU on 1 May, 2004ⁱ, and aims to strengthen civil society by creating a network of civil society actors concerned with administrative detention in these Member States.

The Report

This report is an essential part of this project. It is based on information obtained by the national partners through research conducted between February and July 2007. The research focused on national law concerning administrative detentionⁱⁱ of asylum seekersⁱⁱⁱ and illegally staying third country nationals^{iv}, as well as on the conditions in one or more detention

centres in each of the 10 new Member States.

Each partner prepared a national report and the information contained therein was compiled and analysed into a Regional Report. In addition to highlighting the situation in detention, the report focuses on best practice.

The research covers detention conditions in 30 detention premises/facilities spread across the 10 new Member States: two in Estonia, one in Latvia and one in Lithuania, on the North-Eastern border; six in Poland, two in Slovakia, four in Hungary and one in Slovenia, on the Eastern border; five in Cyprus on the South-Eastern border; three in Malta on the Southern border; and five in the Czech Republic.

The report is divided into four parts: the first contains the 10 national reports; the second outlines EU immigration and asylum law and policy, with particular reference to detention; the third part examines the use of detention in the 10 new Member States, summarising the main findings of the research and highlighting best practice; the last part focuses on civil society activity in the area of administrative detention in the 10 new Member States.

The following is an outline of the research, including the methodology and the main findings.

Methodology

The research methodology was developed by the partners on the basis of a common glossary, which defines a number of key notions. The definitions applied are those contained in EU legislation which has been adopted or is in the making.

Project partners worked with common questionnaires to ensure a maximum of comparability and coherence. The information obtained was first compiled into national reports and then processed at comparative levels, against the background of EU asylum and immigration policy, focusing on: basic national legislation; detention conditions and best practice; and civil society activities.

For the purposes of this report and the national studies, practice findings and best practice analysis focus on the period between February and July 2007.

The information collected was then analysed in the light of criteria and standards of best practice drawn from established international and European legal and other instruments, including:

- o the CPT standards;
- o the 2003 EU COUNCIL DIRECTIVE laying down minimum standards for the reception of asylum seekers;
- o the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers;
- o the 2005 Council of Europe Committee of Ministers Twenty Guidelines on Forced Return.

Assessing “best practice” in this manner means using the instruments merely as orientation and guidance.

This research has a number of limitations, which include:

- o The sheer amount of information collected on a relatively wide variety of topics;
- o Difficulties in comparing and analysing results due to differences in national context in the different Member States;
- o Lack of information required due to lack of cooperation on the part of the authorities, lack of publicly available information and lack of standardised data;

- o Lack of access to one or all of the centres assessed in the report, which led to a reliance on information from third parties which could not be corroborated through direct observation.

Research findings

The states described as the 10 new Member States share a number of common characteristics, apart from the date of their accession to the EU. Foremost among them is the fact that all, except the Czech Republic, are at the borders of the EU and therefore share joint responsibility for policing part of its external borders. As a result of EU accession, the control of illegal immigration in and through their territory became an increasingly important issue on the national agenda. Some experienced an increase in the number of illegally staying third country nationals and/or asylum applications within their territory in recent years and few had the necessary structures in place to deal with this new reality.

However, there are a number of significant differences in the national context in each of these states. These are due not only to the geographical location and specific characteristics of the different Member States, but also to the nature of the migratory flows they experience, and the national laws, policies and practices regulating immigration and detention.

Use of administrative detention

With specific reference to the use of administrative detention in these countries, research showed three distinct traits at national level:

- in eight out of ten States policy and practice changed significantly with EU accession; this was also due to an increase in the number of asylum applications and the number of illegally staying third country nationals;
- in one other state policy and practice did not change at all (Cyprus);
- in the other state it changed minimally, but was labelled differently (Hungary).

Comparative observations on basic national legislation

National laws on detention may be largely divided into two categories: those regulating the manner in which detention is implemented and those regulating the rights of people in detention.

The former category includes: the legal grounds for detention, the issuing of a detention order, the possibilities for challenge or review of the decision to detain, the duration of detention and the grounds for release.

As will be seen from the brief outline hereunder, there are significant disparities among national laws in this area, most notably, but not only, in the area of review or challenge of detention.

Legal grounds for detention

Each of the 10 new Member States detains third country nationals subject to a removal order. This measure concerns migrants who do not have the right to stay on the territory of the State: migrants who entered irregularly in the country, people whose permit to stay is not valid anymore, as well as persons whose application for asylum failed.

The law in Estonia, Cyprus, Czech Republic and Slovenia, provides that asylum seekers may be detained in certain circumstances. Some examples include:

- where an application for asylum is made at the border
- in case of successive applications
- establishing identity, particularly in the case where the individual concerned is not cooperating
- where an asylum seeker is awaiting transfer to another State in terms of the Dublin II Regulation

Although national legislation in the other Member States does not specifically provide for the detention of asylum seekers, they may in fact be detained under other legal grounds. For example, they may be detained pending transfer to another

Member State in terms of the Dublin II Regulation, although the law does not specifically provide for it. Detention of asylum seekers may also be justified by the fact that a removal order has been issued against them or the fact that they have been refused admission into national territory.

Other grounds for detention of asylum seekers and irregular migrants could include: medical reasons (Czech Republic, Lithuania – asylum seekers); the existence of a threat to public order, public security or public policy (Latvia, Lithuania, Czech Republic, Poland – third country nationals; Estonia – asylum seekers); suffering from a mental disorder or mental defectiveness (Malta – third country nationals); inability to maintain oneself and one's dependents (Malta - third country nationals); risk of absconding (Czech Republic, Hungary – third country nationals).

Legal grounds for detention order

In almost all of the 10 new Member States, detention is the result of a detention order. The only exception is Malta, where detention is the direct consequence of a removal order.

Detention orders are usually issued by an administrative authority, such as the immigration authorities or the border guard, however, national legislation of most countries provides that for detention to be prolonged beyond the stipulated time (e.g. Estonia, Lithuania, Poland – 48hours; Hungary – 72hours) a court order to this effect needs to be obtained.

In some cases, such as Malta and Cyprus, there is no requirement of a court order to detain or prolong the detention of illegally staying third country nationals.

Challenge or review of detention

The legislation of most States allows third country nationals to appeal against the removal order issued against them.

Some States also provide a form of periodic review of detention, in the sense that for detention to be prolonged beyond the period of time stipulated in the law a specific court order must be obtained upon application by the competent administrative authority (e.g. Hungary - every 30 days; Estonia, Latvia – every 2 months).

In addition in the majority of the 10 new Member States third country nationals held in custody can challenge their detention. However, from the information collected it was not clear whether in all cases the remedies provided were in fact speedy or effective, as required by art 5(4) of the European Convention on Human Rights and art 18(2) of the Procedures Directive.

There are some exceptions to this rule: e.g. in the Czech Republic asylum seekers detained under the Dublin II Regulation do not have the right to challenge their detention.

Such remedies are totally meaningless unless detainees are informed of their rights to challenge their detention. The law stipulates that third country nationals should be informed of their right to challenge their detention in a language they understand only in Czech Republic, Latvia, Hungary and Slovakia. In the other countries there is no such provision.

Moreover, in a number of countries, e.g. Latvia and Malta, detainees are not provided with free legal assistance to make the required applications, making all legal remedies virtually inaccessible.

Legal grounds for maximum duration

The legislation of the majority of the 10 new Member States lays down a maximum duration of detention. Only Lithuania does not provide a maximum duration and in Malta the maximum duration is established by policy not by law.

The maximum duration varies from one country to another. It may also depend on

whether the individual concerned is an asylum applicant or an illegally staying third country national.

In Slovakia, Slovenia, Hungary and Czech Republic, third country nationals to be removed cannot be held in custody for more than six months. This period may be extended in certain cases.

In the Czech Republic however, this time limit is lower where minors and asylum seekers in transit centres are concerned.

In Poland, Estonia and Latvia, the court may order detention for 2-3 month periods up to a maximum of 20 months in Latvia, one year in Poland and indefinitely in Estonia. Malta has the longest time limit for detention of third country nationals; one year for asylum seekers and one year and half for people to be removed. On the contrary, Cypriot law limits the duration of the detention of asylum applicants to 32 days.

Legal grounds providing for release

Most of the 10 new Member States provide ground for releasing third country nationals held in detention however, once again, there are significant differences between national laws.

One difference is in the authority competent to order release, which could be in the hands of administrative authorities (e.g. immigration authorities in Malta and Poland) or the court (e.g. Estonia, Czech Republic, Lithuania and Slovakia).

Another is in the grounds for release found in the national laws of the 10 new Member States, which are various and include: disappearance of the reasons which justified detention (Lithuania, Slovakia, Czech Republic, Hungary, Latvia, Slovenia, Estonia); when the period of detention expires (Lithuania, Hungary, Slovakia); a grant of some form of international protection (Malta, Poland – refugee status; Czech Republic – any form of international protection); impossibility of effecting removal (Hungary, Slovenia); when the

conditions for carrying out the removal are ensured (Hungary); when the conditions for alternative measures are met (Slovenia).

In addition to the laws regulating detention *per se*, the national laws of the Member States concerned also contain provisions regulating the rights of asylum seekers and third country nationals throughout the duration of their detention. Once again, as will be seen, here there are a number of differences between the different regimes in place.

Contact with the outside world

This heading relates to detainees' right to receive visits, assistance from the outside and to maintain contact with the people of their choice.

With regard to legal assistance, which is guaranteed by art 16(2) of the Procedures Directive and art 5(4) of the ECHR (cf. *Amuur vs France*), the majority of the 10 Member States provide detained third country nationals with the right to obtain legal assistance, but it is not always provided free of charge (e.g. Malta and Latvia).

Contact with the outside world is guaranteed by law in most States, with the exception of Malta. However, while in most cases access to legal counsel is usually unrestricted, access to family or friends is almost always limited. Poland, Lithuania, Malta, Hungary and Slovenia allow UNHCR unlimited access to asylum seekers in detention. Visits by NGOs are allowed by law in case of Poland, Cyprus, Latvia, Slovenia and Malta.

In terms of Lithuanian, Slovakian, Hungarian and Cypriot law detainees may conduct correspondence and receive packages. In Lithuania and Slovakia they may also receive money.

Health care

Each of the 10 new Member states guarantees access to healthcare to third country nationals detained on its territory. This includes medical screening upon being

taken into custody (Poland, Czech Republic, Hungary, Latvia and Slovakia) and medical treatment while in detention. All countries provide at least emergency medical care and essential treatment of illness free of charge. In some countries detainees may be requested to cover all or some of the cost of medical care in certain circumstances.

Lithuania and Estonia also provide psychological care for vulnerable detainees.

Protection of vulnerable people

The national laws of most States make some provision for the needs of particularly vulnerable people, although the situation of such persons varies from country to country.

Regarding unaccompanied minor asylum seekers the national laws of some countries, e.g. Estonia and Hungary, stipulate that they should not be detained. However Hungary provides for the placement in compulsory places of residence in case of minors subject to alien policing measures. In Poland and Czech Republic the law stipulates that unaccompanied minors should be detained separately from adults. In Malta, the law requires only that the situation of minor asylum seekers is taken into account, but in terms of government policy minors are not detained. In Slovakia, Hungary and Czech Republic, minors may be detained

Regarding women, in Slovakia Poland, Hungary, Latvia and Czech Republic, the law provides that females should be detained separately from men. In Lithuania, single women should be provided with psychological care. In Cyprus, women should be provided with the necessary means for personal hygiene, free of charge and the necessary arrangements should be made to allow lactating mothers held in detention to breastfeed in a private space. At their own cost, they can also remain with the child in their cell. In Malta, the law

provides only that the pregnant asylum applicants' needs are taken into account.

Latvia and Slovakia are the only new Member States to guarantee by law that family members held in detention are accommodated together. In Hungary recent amendments on the detention of families allow the authorities to designate a compulsory place of residence for the family instead of ordering detention if the parent should be placed under detention and as a consequence his/her minor child would be left unattended.

In line with EU legislation, the law in Lithuania and Poland provides for psychological assistance for detainees who are victims of violence, including torture and sexual gender based violence, and, in the case of Lithuania also for the elderly. In Poland and Cyprus, the law guarantees psychological accompaniment for people with mental problems.

Legal grounds for other rights

These relate mostly to living conditions.

In Czech Republic and Hungary, the law stipulates that detained asylum seekers should be provided with basic hygienic standards, food free of charge, a bed, and a locker for personal belongings. In Slovak and Czech law detainees have the right to continuous eight-hour sleep. In addition, in terms of Slovak and Hungarian law, they should have a daily walk in of at least one hour in the open air, the possibility to practice their religion, and the use of the facilities of the institution.

Detention conditions: comparative analysis and best practice

This section briefly outlines the main findings in the area of detention conditions, outlining current practice and identifying examples of best practice.

At the outset, a number of observations should be made.

Even a cursory look at the national reports is enough to realise that the conditions in the different centres studied vary widely. Some of the centres provide acceptable accommodation conditions and adequate access to basic services, while others fall way below the basic standards recommended by the CPT, the UNHCR and the Committee of Ministers of the Council of Europe.

Moreover, in most cases, the examples of best practice identified are little more than the basic standards recommended by the above-mentioned institutions.

Comparison between the centres studied was somewhat complicated by the fact that the centres accommodate widely disparate numbers of people. Moreover, they accommodate people for very different lengths of time, which is largely determined by national legislation, outlined above.

Some centres of the centres studied are very large, e.g. Safi and Lyster Detention Centres in Malta with a maximum capacity of approximately 6-700 people and Vysni Lhoty Reception Centre in the Czech Republic, which can accommodate up to 580. Other centres are much smaller – e.g. Lakatamia Police Station in Cyprus, which can take 10 people, and Budapest Border Guard Directorate in Hungary, which takes 24.

At the time when the research was conducted, out of 19 centres for which information is available, the centres accommodating the largest numbers of detainees were Safi and Lyster Barracks in Malta (which respectively housed approximately 440 and 330 people on 9 March 2007). The smallest numbers were in Lakatamia Centre in Cyprus (four people), Olaine Internment Camp for Illegal Immigrants in Latvia (eight people) and the Väljasaatmiskeskus Centre falling under the Citizenship and Migration Removal Board in Estonia (10 detainees). Of the remaining centres, 10 held between 10 and 50

people, two between 50 and 100 and two between 100 and 155.

Custodial settings and accommodation

The types of premises in which detainees are held vary widely. Some detention centres are located within prisons or police stations. In other cases detainees are held in premises built or converted for use as detention centres. In many cases, researchers noted a prison-like environment.

The facilities provided vary. In some centres detainees are housed in tents pitched in a stony field. In others the accommodation consists mostly of dormitories with hardly any internal recreation space and, at times, particularly in transit zones, there is hardly any outdoor recreation space. In some centres detainees eat and sleep in the same room.

Other centres provide better conditions, with clean, well-lit and adequately furnished rooms and other facilities, e.g. a recreation area, rooms where detainees can meet visitors and lawyers, a kitchen where detainees can prepare meals and/or outer space with trees, grass and sports facilities.

Overnight accommodation provided varies – in most centres the cells or dormitories accommodate less than 10 people. In some cases detainees are accommodated in larger dormitories housing 15–45 people. In some centres detainees are not provided with any sort of furniture to store their personal possessions.

As a rule sanitary facilities are shared, but the number of people making use of them varies. At times, men and women share the same sanitary facilities, but this is not the norm. In some centres researchers noted that the sanitary facilities are inadequate for the number of people held there (e.g. 50 detainees sharing two toilets and one shower).

Examples of best practice

- Small, clean, adequately furnished rooms containing at least a chair, table and wardrobe or locker in addition to the bed
- Windows are neither barred nor consisting of opaque glass
- Adequately-sized well-furnished internal recreation spaces with
 - TV with satellite and VCR/DVD
 - Equipment for indoor sports and exercise
 - Books, craft materials, games
- Surrounding outer space with trees, containing sport facilities
- Sufficient, clean and well maintained sanitary facilities providing adequate privacy
- Separate showers for women and men
- Families accommodated in room with adjoining bathroom
- Detainees have access to a kitchen for preparing food
- Food can be consumed in a separate area – dining room or cafeteria
- Washing machines and dryers available

Accommodation arrangements

In some cases asylum seekers and illegally staying third country nationals are held in prisons or police stations, and on occasion they are housed in the same accommodation as prisoners or people accused or convicted of a criminal offence.

Most of the centres studied house both illegally staying third country nationals and asylum seekers.

In most centres women are detained separately from men, however there are four centres where this is not always the case. In one centre women share the same accommodation and sanitary facilities as men, without adequate provision for privacy and protection from harassment and abuse.

As a rule, where families are detained, children are detained with their parents

and family unity is respected. This does not apply to couples in all countries. Moreover, as a result of the conditions in which they are held, respect for privacy and family life is not always guaranteed.

In most centres, if circumstances allow, detainees are accommodated with people of their linguistic, ethnic or national groups, particularly if they request to be allowed to do so.

Examples of best practice

- Asylum seekers are accommodated separately from illegally staying third country nationals
- Neither asylum seekers nor illegally staying third country nationals are detained with people suspected or convicted of a criminal offence
- Women and men are accommodated separately
- Families and couples are not detained where accommodation facilities are not appropriate, and if they are, they are accommodated together, in a separate accommodation for each family unit
- Detainees are accommodated according to language groups or nationalities, either as a general rule or upon request, wherever possible

Contact with the outside world

In almost all centres researched, with the exception of those in Cyprus, detainees are allowed to contact and meet their lawyers. However, detainees are often unable to obtain the assistance of a lawyer as legal assistance is not always provided free of charge. Access to legal assistance is facilitated in those centres where legal assistance is provided free of charge by NGOs who visit the centres regularly.

As a rule, visits from families and friends are more limited, and there is a very wide margin of difference between the centres in a number of areas, including: the frequency of visits (ranging from unlimited access to one visit every three weeks), the manner in which they are conducted (in a room set aside for the purpose or from behind a glass

screen as in high security prisons) and the clarity of the rules regarding visitors' access (three centres do not have clear rules).

Detainees in most centres can receive mail and packages; the contents will usually be checked by detention centre staff.

In most centres, detainees are allowed regular access to the phone but they must usually pay for their calls. In some centres access is unlimited, but in others it is far more restricted, e.g. once or twice a week or upon request. Detainees in two centres are allowed to use their mobile phone.

Most centres are equipped with at least one TV – usually shared between many detainees, particularly in the larger centres. Some centres provide only local language broadcasts, whereas others are equipped with satellite, cable or VCR.

Examples of best practice

- Friends and family are allowed free access to the detention centres
- Visits from family and friends allowed on a daily basis during working hours (0800-1700)
- Visits are conducted in visiting room, where detainees can have direct contact with their visitors
Detainees can receive mail and packages.
- Visits of lawyers are allowed at any time (on working days) upon request
- NGO lawyers visit the centres on a regular basis to provide free legal assistance
- Religious ministers of different faiths and denominations visit the centres regularly or upon request
- Detainees are allowed unlimited contact with NGOs and relevant international organizations by phone, face-to-face, or in written form as frequently as they wish.
- NGOs who are permitted to enter the centre have unhindered access to the detainees
- Detainees have unrestricted access to a payphone and are provided with a

prepaid phone card at regular intervals (every two months)

- Detainees are allowed to use cell phones at their own expense
- Detainees are provided with cable/satellite TV in languages they can understand, fresh newspapers

Activities and services for detainees

Overall the activities available to detainees are very limited.

Detainees only have free access to open air during the day in seven of the centres studied. In other centres detainees' freedom of movement is far more restricted.

In six centres detainees spend most of the day confined to their cells and are only allowed out at stipulated times, for specific purposes. In other centres detainees are confined to an assigned area, usually an area of a building for most of the time. In all but one of these centres, they are let out for fresh air regularly – which could mean anything from a couple of times a day to a couple of times a week, or whenever the authorities allow.

The most widely available activity is watching TV, with the limitations mentioned earlier. In some centres a number of activities are offered, such as: playing cards or board games, table-tennis, listening to the radio, reading, use of gym equipment, and language classes, but as a rule detainees are left to occupy themselves.

Service offered include: social work services, psychological support where indicated, translation and pastoral care, but these are not available across the board.

Examples of best practice

- Unlimited access to radio and TV, with satellite or cable, in well-sized adequately furnished rooms
- Proper facilities for outdoor sports and the possibility to use them on a daily basis
- Unrestricted movement both inside the premise and outside within the precincts

of the compound, at least from morning to evening

- Regular permission for families to walk around in the town
- Social workers responsible for organizing regular (daily) activities and providing individual social work services
- Provision of services of interpreters/translation
- Provision for religious needs, including space to pray and special diet in line with religious requirements

Health care

Some form of primary medical care is provided on site in almost all of the centres for which information was available. In most cases detainees are taken to hospital when they require more specialised care. The researchers from two countries (Malta and Czech Republic) noted the widespread use of handcuffing when escorting detainees to hospital.

The quality and efficacy of detainees' access to medical care and follow-up varies and seems to depend on a number of factors, including the availability of medical personnel on site, the number of people making use of the medical service in place and the availability of interpreters.

Psychological support is available in Poland and one centre in Estonia, however, detainees in Poland expressed concern about the objectivity of the service.

Psychiatric care is normally also provided, but in many cases, after treatment, detainees are normally sent back to detention, which once again causes their situation to degenerate.

Medical care is normally provided free of charge, with one exception.

Examples of best practice

- Medical practitioner and nurse available daily on site and service is offered throughout the day
- Medical service offered on site for the entire day, not just the morning

- In case of need, detainees are brought to external hospitals, specialised doctors, etc. and not handcuffed
- State medical treatment is provided is free of charge.
- Psychological care is provided free of charge

Special provisions for particularly vulnerable persons

Vulnerable people may be detained for some time in all of the states where this research was carried out.

In Malta, where current government policy stipulates that vulnerable people should not be detained, they are detained until their case is assessed, release is ordered and alternative accommodation is found in the community. This may take days or weeks and, on occasion, it has taken months.

In Lithuania, as a rule, minors and families are not detained. In Slovenia they may be detained, but children are allowed to go to school and families with children are allowed more freedom. In Malta and Poland, however, no specific provision is made for children and the centres are in no way adapted to their needs.

The situation is much the same for other categories of vulnerable people, with some centres (in Estonia and the Czech Republic) providing a more supportive and protected environment for vulnerable persons. Services provided include: social work services, psychological support, protected accommodation, appropriate diet and/or medical care as necessary.

The special needs of victims of trauma and torture and of people suffering from mental health problems are often not catered for in any way.

Examples of best practice

- Specific policy providing that vulnerable people shall not be detained

Where vulnerable people are detained, the following were considered examples of best practice:

- Accommodation of vulnerable people in specially designated centres or particular zones within centres, providing adequate protection and support, including separate accommodation, social work services and psychological support
- Families with children are allowed to leave the detention centre and go for a walk in the town
- Children attend the local school (outside the centre) and may be accompanied by their mother or father

House rules, sanctions, and complaints mechanisms

In most centres there is some form of house rules regulating the daily timetable of detainees and, at times, their rights and obligations while in detention.

There is considerable disparity when it comes to administration of discipline within the centres. In some cases the rules are formally laid down by law or government decree, however in most cases the arrangements are far more informal. In at least four countries there are no publicly available rules regulating the administration of discipline.

In most cases discipline seems to be administered by the Director or other person in charge of the centre, who has a wide margin of discretion in determining fault and administering punishment. None of the reports mentioned that detainees have a right to challenge a decision taken by the Director of the centre imposing punishment, whatever the nature of the punishment imposed.

The sanctions imposed may be quite serious and include seclusion or confinement; isolation; and use of means of restraint including straitjackets. Other sanctions involve the withdrawal or restriction of basic rights or privileges, for example, access to the telephone, access to open air or

possibility to receive visits, prohibition of the use of personal assets, restriction of freedom of movement, denial of access to getting shopping done.

In three centres there were reports of allegations that, on occasion, staff used violence against detainees who were accused of breaching the rules of the centre. In two centres, there were reports of ill-treatment of detainees placed in confinement or seclusion.

Most centres do not have an effective and independent complaints mechanism in place. In many centres, at most complaints are examined by the Director of the centre. In Estonia detainees may complain to the Chancellor of Justice, while in Cyprus detainees have the possibility of complaining to the Ombudsman. However, in Cyprus the researcher raised concerns regarding accessibility of the procedure.

In most cases, it was not possible to assess the effectiveness of the different complaints mechanisms in place. In the Czech Republic detainees said they considered the measure in place, which involves addressing complaints to the social workers at the centre, sufficient and effective.

Examples of best practice

- Clearly established disciplinary rules

Information provided to detainees

As a rule, detainees are provided with information regarding the house rules, where these exist, and their rights and obligations while in detention, either verbally or in written form, through leaflets and or/posters on the wall of the centre.

Moreover, in most countries state authorities provide detainees with an amount of information about their immigration status and the reasons for their detention.

By contrast, information regarding the remedies available to challenge detention is not uniformly provided. In Malta, one centre in the Czech Republic and Poland,

such information is only provided by NGOs or by lawyers.

Similarly, information about applying for asylum is not systematically provided in all countries. Moreover there is significant disparity among the countries researched in the manner in which such information is provided to detainees. In Poland, Malta and Hungary such information is not provided by the authorities – information is either obtained from NGOs or UNHCR.

It appears that most information is provided either immediately upon arrest or upon being placed in detention. At least three researchers noted that the detainees interviewed did not seem to have fully understood all of what had been explained to them. In some centres (Czech Republic, Lithuania) there is a system in place to ensure provision of information at various stages, however in most cases there is no formal structure in place to provide detainees with further information on a consistent and systematic basis, although staff sometimes provide this service informally.

A considerable amount of information is provided in writing in many of the countries researched, and it is often available in more than one language. Moreover, in some cases the law requires that, where the necessary, translated information is also be provided orally through an interpreter.

Examples of best practice

- Systematic provision of information on asylum and immigration status and other related matters both on apprehension and one week later, by social workers or staff at the centre
- Follow up of requests for information by staff
- Provision of basic information in writing in different languages
- Presence of interpreter guaranteed by law
- Information published by other agencies (NGOs and UNHCR) providing information about detainees' rights, the

asylum procedure, etc. are made available and/or displayed in centres

Staff

Most of the detention centres researched are run by police or border guard, at times in collaboration with another agency, such as private security company or members of the civil service. The main exceptions are the centres in Czech Republic, which are run by a civilian agency responsible for the daily management of the centres and the welfare of detainees, although police and a private security company provide security and other services within the centres.

Staff at 18 of the centres studied receives some kind of training, which could be regular or more occasional.

Information on staff-detainee ratio was rather scant, but it indicated a remarkable disparity between different centres even within the same country. The ratio of guards to detainees at the time of the research ranged from 1 guard to 6 detainees at one centre to 1 guard to 25 detainees at another.

Having a small staff-detainee ration effectively means that it is more difficult for staff to communicate effectively with detainees and respond to their needs. This was highlighted in the report on Malta. Moreover the reports on the Czech Republic and Slovenia point out the importance of developing relations between staff and detainees focusing on welfare in addition to security.

Examples of best practice

- Regular obligatory training on a range of different issues including legal issues and human rights, intercultural communication, conflict resolution and language training for detention centre staff;
- Large ratio of staff to detainees in order to foster better staff-detainee relations;
- Centres administered by non-security agencies, to allow for a greater focus on welfare as opposed to security.

Monitoring

National reports describe a number of very different structures and mechanisms in place to monitor detention conditions in the each of the 10 new Member States.

Some are officially established independent mechanisms; e.g. in some countries the Ombudsman/Chancellor of Justice visits regularly and reports on conditions in detention. In other countries the court has the right to monitor conditions in the centres, a function they carry out in some centres in Poland.

In other countries there are also internal monitoring mechanisms; these are administrative bodies charged with monitoring conditions within the centres, however, it is not possible to assess their independence or otherwise.

An amount of monitoring is also carried out by NGOs and by external monitoring mechanisms, such as the CPT, the LIBE Committee of the European Parliament and the Council of Europe Human Rights Commissioner.

Most monitoring is carried out on an occasional basis, with the exception of the monitoring by the courts in Poland, the Chancellor of Justice in Estonia and the internal monitoring in Poland, which take place once a year.

Examples of best practice

- Regular periodical monitoring by the courts at least once per year
- Monitoring by the Ombudsman, an independent parliamentary office
- Monitoring and reporting by civil society actors
- Existence of a formal agreement between public authorities and NGOs to monitor conditions in the centres
- Internal mechanisms for monitoring

Detention: the detainees' perspective

Descriptions of conditions within detention centres, though undoubtedly useful, often

fail to convey the true extent of the impact of detention on detainees' physical and psychological well-being.

We firmly believe that the human cost of detention cannot be ignored.

The overall picture that emerges from many of the national reports which commented on the atmosphere within the centres, especially Poland, Lithuania, Latvia, Slovenia, Malta and Cyprus, is one of a general feeling of apathy, isolation, discontent and, at times, even despair, among the detainees. This was attributed to a number of factors including the poor conditions of detention, the length of detention, the restricted regime imposed on detainees, including the inability to go outdoors, and the lack of activities to occupy the time.

Many detainees are relatively young and the prolonged period of inactivity is particularly hard to endure, however, beyond all these issues, the thing that they find most difficult to deal with is the deprivation of liberty. This is perhaps particularly true in the case of asylum seekers, who arrive in search of protection and end up spending months in detention awaiting the outcome of their asylum application.

The researchers reported a number of incidents that occurred in the centres. There are a number of common traits among the incidents identified however it was not possible to ascertain whether these were the only incidents which in fact occurred within the centres. The incidents reported include: suicide attempts, hunger strikes, setting fire to objects within the centre, escapes, vandalism, physical fights and general protests.

Conclusions and recommendations

In conclusion, it is clear that, in spite of the fact that there are a number of examples of good practice, the situation of migrants in detention in the 10 new Member States remains one of extreme hardship,

particularly where detention is prolonged, conditions are poor and the restrictions imposed upon personal liberty (even within the centre) are severe.

Possibly the hardest thing for detainees to bear is the total deprivation of liberty which detention imposes.

We therefore urge states:

- not resort to detention, particularly of asylum seekers, unless all other non-custodial measures have failed;
- to ensure that detention is not resorted to where it can serve no legitimate purpose; e.g. the facilitation of removal;
- to create alternatives to detention.

Finally, we call upon states to ensure that, where detention is used, conditions are in line with international standards of best practice.

Creating and strengthening a sustainable network of civil society actors

This report was part of a project intended to create and strengthen a sustainable network of civil society actors concerning administrative detention in the 10 new Member States of the EU.

The research therefore examined existing civil society activities and networks and made recommendations intended to strengthen civil society's capacity to respond to the challenges faced.

Access to detention centres

Access to detention centres is largely determined by national law and/or policy. In practice civil society institutions are allowed access in all States except Cyprus, where only the Ombudswoman, the Law Commissioner, specific priests and the CPT are allowed access.

Main activities pursued by civil society actors in detention

Activities include: visits; legal counselling and assistance; social work services.

Networking

The research showed that there is no networking at local or regional level in seven out of the 10 States where the research was conducted. There is some networking in Hungary, Malta and Slovenia.

However, civil society organizations in a number of Member States are part of larger networks/ organizations, e.g. Caritas Europa, the International Committee of the Red Cross, Jesuit Refugee Service – Europe, and the International Helsinki Federation for Human Rights. Moreover, a number of NGOs are members of external networks, mostly the European Council on Refugees and Exiles (ECRE) and the International Detention Coalition (IDC).

Conclusions and recommendations

After comparative analysis and reflection, the Steering Sub-Committee of the project elaborated the following recommendations:

- In general, the scope of regular and occasional activities (services for detainees) should be increased.
 - Where national legislation is a basic obstacle, like in Cyprus, advocacy should aim at more permissive legislation.
 - Where administrative measures hinder more civil society involvement, specific attention should be given to promoting constructive cooperation between civil society actors and public authorities.
- Civil society actors should look for specific information and training on opportunities and mechanisms for funding staff and their work.
- At local and national level, in a spirit of completion, civil society actors which are already active in the field of administrative detention should develop
 - patterns for networking, for example:
 - § periodically meeting multilateral round tables
 - § occasional multilateral round tables according to issues

- § bilateral cooperation on selected matters
- structured reciprocal written information, for example through
 - § common newsletters
 - § mailing lists for sporadic information
- contacts to other civil society actors which are not yet active in the field of administrative detention and engage in awareness raising
- establish/foster appropriate contacts with UNHCR and IOM
- The research partners in this project should regularly update the information in their national report.
- At European and global level, those actors which are not yet internationally linked, should be a member of at least one internal and/or external network/association/ organisation.

Hereinafter referred to as the 10 new Member States

ⁱⁱ For the purposes of this report, the term “administrative detention” refers to a situation of deprivation of liberty which is an administrative measure and not a measure of the penal system.

ⁱⁱⁱ For the purposes of this report the term “asylum seeker” refers to third country nationals or stateless persons who have made an application for asylum in respect of which a final decision has not been taken

^{iv} For the purposes of this report the term refers to third country nationals who have been refused admission into national territory or whose presence is regarded as “illegal stay” because it does not fulfil the conditions for residence or stay in that Member State.