

DETENTION OF ASYLUM SEEKERS IN RECEPTION CONDITIONS DIRECTIVE : DANGER !

Asylum-seekers should never be detained

The ongoing recast of the Reception Directive gives the possibility to Member States to administratively detain asylum-seekers in many different cases. Following an initiative from the ECRE network, many organisations have denounced this evolution and have provided the European authorities with a list of “minimum” guarantees which the Directive should entail should detention be still considered necessary.

The Migreurop network wishes to remind that several texts may be referred to by Member States which already strictly regulate the detention of persons seeking international protection, such as the Conclusion n° 44 (XXXVII) of the Executive Committee of the UN High Commissioner on Refugees on the Detention of Refugees and Asylum-Seekers, and Recommendation REC(2003)5 of the Committee of Ministers of the Council of Europe on measures of detention of asylum seekers. In that context, it is our opinion that the explicit mention in the Directive of the possibility to detain asylum-seekers – even if all the reservations attached to their status are included – seems not only superfluous, but also dangerous. Indeed, given current practices in some Member States and the trivialisation of the use of detention as an immigration management tool, this provision may turn into an incitement. Migreurop therefore call for the Reception Directive to explicitly prohibit the detention of asylum-seekers.

At a time when, almost all over the world, administrative detention is developing as a tool for the management of migration, as shown by the growing number of centres or their capacity alike, the undersigned organisations express their concern regarding the reform of European legislation concerning asylum applicants that is underway. In a few weeks’ time, the European Union will vote on the recast Reception (of asylum seekers) Directive. The draft text, which is being negotiated, enables a widening of the possibilities to detain asylum seekers.

However, many reports from NGOs and institutions¹ underline the heavy human cost that such deprivation of liberty in the framework of immigration policies entails, and how much it contributes to the criminalisation of migrants. As for asylum-seekers, the routine use of detention is particularly

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- UNHCR, [*UNHCR’s revised guidelines on Applicable criteria and standards relating to the Detention of Asylum Seekers*](#), 1999
- Parliamentary Assembly of the European Council, Resolution 1569 (2007) [*Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers*](#)
- European Parliament, [*The conditions in centres for third country national \(detention camps, open centres as well as transit centres and transit zones\) with a particular focus on provisions and facilities for persons with special needs in the 25 EU member states*](#), 2007
- Amnesty International, [*Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees*](#), 2007
- Medical Justice, [*56 case-studies by Medical Justice*](#), 2008
- The royal college of psychiatrists, [*Significant harm - the effects of administrative detention on the health of children, young people and their families*](#), 2009
- The DEVAS Project, [*Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union*](#), 2010

shocking insofar as it contradicts UNHCR's specific recommendation that detention should only be used as a last resort.

In the provisional version of the Reception Directive that may be adopted by the end of the Danish Presidency in June 2012, the grounds for detention are presented in a way that allows Member States a very wide margin of interpretation, opening the way to the systematic or quasi-systematic detention of asylum-seekers.

This Directive will thus act as a support to some Member States legislation whereby asylum-seekers may be detained in a number of circumstances, as well as to practices in Member States whereby asylum-seekers who have just crossed the border or who fall within the scope of the Dublin Regulation are systematically or almost systematically detained.

Some elements of the recast are particularly appalling, like the absence of any prohibition of the detention of unaccompanied and separated children who seek asylum, with no mention of such decision being only "exceptionally justified", as entailed in the 2010 Commission's Action Plan on Unaccompanied Minors. The text does not even take into account the recommendation of the Council of Europe's Parliamentary Assembly according to which unaccompanied children should never be detained. The proposed directive does not prohibit the detention of other particularly vulnerable persons, pregnant women, the elderly and sick or traumatised people. Besides, as it stands, the Directive envisages the possibility of detaining asylum-seekers in prison should no place in administrative detention be available.

Although the text provides for detention to be ordered for « as short a period as possible » and that the procedure « should be executed with due diligence », no maximum length is set, which leaves the door open to all sorts of abuse. It is unacceptable that the European Union considers detention as part being part of the "reception" schemes, and legitimises the use of detention as a tangible alternative to the lack of appropriate reception facilities for persons who are not meant to leave the European territory.

We, the undersigned organisations, hereby demand that the draft recast Directive be immediately stripped of all its provisions that may authorise or legitimate the detention of asylum-seekers, and that the detention of asylum-seekers be explicitly prohibited in the text. We call for the adoption of clear provisions in the directive for the reception of all asylum-seekers in appropriate facilities based on their individual situation (reception centres; psychiatric facilities; reception centres for unaccompanied and separated children, guardianship or foster families) and that support mechanisms be adopted to facilitate the implementation of this measure.