



Analysis

“We are not animals”¹: Concern intensifies over detention of migrants in Europe

Marie Martin

Recent reports on very poor detention conditions of migrants in some EU countries give a worrying picture of current detention standards and practices. They emphasise systemic issues at stake with the implementation of the Returns Directive now transposed in all EU Member State national laws and further questions the compatibility of administrative detention with the respect of fundamental rights.

Italy: Rome’s identification and deportation centre (CIE)²

In June, the Italian NGO Doctors for Human Rights (MEDU - Medici per i Diritti Umani) published a report on detention conditions of migrants in Rome’s Ponte Galeria centre, Italy’s largest immigration detention centre (capacity of 354). This report was released after a visit from MEDU in the CIE in the framework of their programme on health and assistance to migrant detainees, and in the framework of the Open Access campaign jointly organised by Migreurop and European Alternatives.³

The report brings further medical evidence of degrading detention conditions in prison-like premises and their impact on detainees’ physical and mental health. Detention centres are described by the organisation as “a facility *genetically* [intrinsically]unable to safeguard the dignity and fundamental rights of the persons”, as attested by several cases of self-injury, riots, hunger strike movements, and reports of violence from police officers.

¹ Migrants detained in Otopeni centre reporting to Migreurop in June 2012

<http://www.migreurop.org/article2144.html?lang=fr>

² Medici per i Diritti Umani (June 2012) BEHIND HIGHER FENCES. Report on the identification and deportation centre of Ponte Galeria in Rome

http://www.mediciperidirittiumani.org/pdf/BEHIND_HIGHER_FENCES.pdf?utm_source=SendBlaster&utm_medium=email&utm_term=18.giugno.2012&utm_content=comunicato&utm_campaign=Cie

³ <http://www.openaccessnow.eu/>

Since August 2011 and the transposition of the EU Returns Directive⁴ into Italian law, immigration detention can last up to 18 months, compared to 180 days before the transposition of the directive (60 days before 2009). Since then, however, access to health care in Ponte Galeria's centre has seriously diminished, with serious delays in the medical follow-up and treatment of the 2.049 migrants, including EU citizens from Roma origin and victims of trafficking for sexual exploitation, who have been detained at some point in this CIE in 2011.

Cyprus: systematic detention of asylum-seekers

Systematic detention for irregular migrants and the frequent detention of asylum-seekers in Cyprus have been denounced as being in contradiction with EU law by Amnesty International in its latest report issued in June.⁵ Detention orders are not automatically subject to judicial review, while no access to legal aid and effective remedy is ensured, in breach of the EU Returns Directive which was transposed into Cyprus law in November 2011.

Amnesty delegates visited most of the official detention facilities, all being prisons since the construction of the first immigration detention is ongoing. In most of the cases, detainees had very little access to adequate health care, general detention conditions were very poor (very little, if not no access to fresh air; overcrowded cells). In Limassol prison, detainees shared their cell with convicted prisoners.

The reports particularly criticised the "routine detention of irregular migrants", even for those who cannot be removed (e.g. lack of travel documents; statelessness) and the authorities' "failure to examine less coercive measures" as required by the Returns Directive.

Romania: the cry for help of detained migrants in reception centres

Over the past few months, Migreurop has received several calls from migrants held in Romania's two immigration detention centres, in Arad and Otopeni airport⁶. Serious cases of brutality and abuse by officers were reported, raising deep concerns about detention conditions and the monitoring of immigration detention centres in Romania. Detainees in the Arad camps are allowed fifteen minutes outside of fresh air a day. The Returns Directive applies in Romania as well. Since 2011, when the Directive was transposed into national law, detention can last up to 18 months, compared to six months before (detainees who could not be removed after six months were 'tolerated' on the territory although no residence permit was issued to them).⁷

Romania has a "small" detention capacity of about 1,500 (two immigration detention centres and six transit facilities)⁸, and although detention conditions have long been criticised for violating European

⁴ The Returns Directive regulates removal procedures of third country nationals staying irregularly in the EU, especially detention for the purpose of removal <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

⁵ Amnesty International (2012) Punishment without a crime: detention of migrants and asylum-seekers in Cyprus http://www.amnesty.org.uk/uploads/documents/doc_22579.pdf

⁶ "This is hell": Romania horrendous detention conditions, Statewatch news online <http://www.statewatch.org/news/2012/apr/02romania.htm>

⁷ "En route vers l'Europe, des Maghrébins se retrouvent piégés en Roumanie", Julia Beurcq for *Mediapart* and *Le Courrier des Balkans*, 19 June 2012 <http://www.openaccessnow.eu/news/2012/press-report-in-arad-detention-center-romania/>

⁸ Global Detention Project, Romania Detention profile (latest update May 2010) <http://www.globaldetentionproject.org/countries/europe/romania/introduction.html>

standards, attention has so far focused more on detention conditions in prison than on immigration detention.

Devastating impact of detention on migrants

Whether provisions foreseen by the Returns Directive are followed or not, examples abound that document the devastating effects of detention on irregular migrants and asylum seekers.

*“Amnesty International’s delegates saw the devastating effect that prolonged and unlawful detention had on mental and physical health. Detainees had difficulty with focusing and remembering key dates, and demonstrated signs of anxiety and stress, including scars caused by self-harming. The delegates were told that in the months before their visit, some such detainees had attempted suicide and one had died as a result”.*⁹

In a recent report, the UK-based charity Medical Justice accused the UKBA of being “complicit in re-traumatisation”, as interviews with detainees revealed that victims of torture were often detained in immigration detention, in breach of Detention Centres Rules.

*“Torture survivors were failed so badly that two of them were removed and tortured again in their home country before they made it back to the UK to claim asylum again. Apart from these two, no others were removed which begs the question why they were detained for the purpose of removing them in the first place”.*¹⁰

According to a 2010 the DEVAS study coordinated by Jesuit Refugee Council Europe (Detention of Vulnerable Asylum-Seekers and Irregular Migrants in the European Union):

*“A person becomes vulnerable from the first day of their detention, as the individual’s personal condition is instantly affected due to their disadvantaged and weakened position”.*¹¹

Growing detention of migrants in Europe

In 2008, many organisations opposed the adoption of the Returns Directive which authorises detention of migrants for a maximum of 18 months pending their removal, a period which seems to exceed the reasonable amount of time necessary to enforce a removal order.¹² As argued by organisations when the Directive was adopted, this piece of legislation on removal did not provide enough safeguards for irregular migrants. On the contrary, it entailed the risk legitimising a quasi-systematic detention of migrants even in cases with no real prospect of removal exists.

⁹ Ibid at 5

¹⁰ Medical Justice (2012) Second Torture: the immigration detention of torture survivors <http://www.medicaljustice.org.uk/images/stories/reports/secondtorturereport.pdf>

¹¹ Jesuit Refugee Council (2010) Becoming vulnerable in detention http://www.irseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf p.13

¹² “Against the outrageous Directive!”, full-text of speech given by Yasha Maccanico (Statewatch) at the hearing with NGOs organised by the GUE group, European Parliament, Strasbourg on 12 December 2007 <http://www.statewatch.org/analyses/no-65-eu-outrageuos-directive-maccanico.pdf>

Recent reports and policy developments such as the planned construction of 50 immigration detention centres in Greece confirm this tendency. The mapping project by the Migreurop network illustrates very clearly this development (see 2005, 2007 and 2009 maps).¹³

However, the European consensus over the notion of detention and its inclusion in a growing number of texts raises serious concern among NGOs and legal experts. In June, the Meijers Committee wrote to the European Parliament commenting on the inclusion of detention provisions in the Reception Directive and the Dublin II Regulation without specific safeguards for vulnerable migrants, including unaccompanied minors and families with children.

*“The detention provisions in the Dublin Regulation and Reception Conditions Directive are arguably at odds with the recent case-law of the ECtHR [European Court of Human Rights] concerning the detention of children in facilities for aliens detention”.*¹⁴

The possibility to detain asylum-seekers in the draft recast version of both the Dublin II Regulation (intra-EU transfers to the first EU country of arrival) and the Reception directive (reception conditions of asylum-seekers in the EU), brought about fierce criticism among non-governmental organisations, 166 of whom signed an appeal to the European institutions recalling that:

*“The protections afforded by international refugee and human rights law presuppose that, as a general rule, asylum seekers should not be detained and that detention may only be used in exceptional cases, and only with full procedural safeguards in place”.*¹⁵

Court ruling and UN report criticising criminalisation of irregular migrants

Whether in custody or administrative detention for the purpose of removal, the growing detention of migrants is raising concern amongst national and international institutions.

A recent report by the UN Special Rapporteur on the human rights of migrants expressed deep concern at the “substandard detention conditions” in which migrants may be detained as “[d]etention systematically deteriorates the physical and mental condition of nearly everyone who experiences it”.¹⁶ [emphasis added]

“As migrants in administrative detention have not been charged with or convicted of a crime, they should not be subject to prison-like conditions and environments, such as prison uniforms, highly restricted movement, lack of outdoor recreation and lack of contact visitation”.

Yet, detention of migrants is used more and more systematically, despite the fact that:

“There is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased”.

¹³ Detention centres in Europe and its neighbourhood: maps (2005, 2007, 2009. 2012 updated version soon available) <http://www.migreurop.org/rubrique266.html?lang=fr>

¹⁴ <http://www.statewatch.org/news/2012/jun/meijers-committee-reception.pdf>

¹⁵ Appeal to EU institutions: Ensure respect for asylum-seekers’ right to liberty in recast Reception Condition Directive and Dublin Regulation. Not crossing red line – A negotiators’ checklist on minimum detention safeguards, May 2012 <http://www.statewatch.org/news/2012/may/eu-ngo-not-crossing-red-lines.pdf>

¹⁶ Human Rights Council (2012) Report of the Special Rapporteur on the human rights of migrants, François Crépeau, 2 April 2012 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf

Detention of migrants on the sole reason that they are irregular, what the Rapporteur referred to as “the criminalisation” of migrants, “exceeds the legitimate interest of States to control and regulate irregular immigration and leads to unnecessary detention”, as put by the UN Working Party on Arbitrary Detention.

The European Convention on Human Rights sets what the European Court of Human Rights considered¹⁷ as an exhaustive list of criteria where detention may be permitted. Pursuant to Article 5 (1):

“The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”.

Moreover, the requirement for states party to the Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air (which the EU is party to, as well as its Member States) to criminalise the smuggling of migrants does not apply to the migrants who are being smuggled.

The report coincides with the decision by the French Cassation Court on 5 July that custody for irregular migrants is incompatible with the EU Returns Directive.¹⁸ Indeed, detention of irregular migrants for the sole reason of them being undocumented can only be used for the purpose of deportation (i.e. administrative detention and not custody) unless detention has been; it should not be systematic but decided on a case-by-case basis, and only as a last resort and for the shortest period possible. This decision was important, not only to stop practices which criminalise irregularity, but also because most of these detention in custody were very often followed by a placement in administrative detention, thereby systematising detention for the purpose of deportation. In 2009, 297 penal sanctions were decided for irregular stay, while 30,270 persons had been put in immigration detention following an ID check by the police.¹⁹

It is worth noting that in countries like the UK, the absence of time limit to immigration detention by law (because the UK opted out of the EU Returns Directive which sets a maximum length of detention of 18 months) contradicts UN guidelines.

The decision of the French Cassation Court came after the famous European Court of Justice’s landmark ruling in El Dridi case in July 2011. The ECJ was asked to give its opinion on the case of an irregular migrants held in custody detention for the mere ground that he was undocumented. In particular, the court stated that:

“Such a custodial sentence, due inter alia to its conditions and methods of application, risks jeopardising the attainment of the objective pursued by the Directive, namely, the establishment of

¹⁷ ECHR (2003) Vasileva v Denmark, Application no. 52792/99,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61309>

¹⁸ Arrêt n° 960 du 5 juillet 2012 (11-19.250) - Cour de cassation - Première chambre civile

http://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/960_5_23803.html

Avis n° 9002 du 5 juin 2012 de la Chambre criminelle

http://www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/9002_5_23502.html

¹⁹ Actualité du droit des étrangers,

http://vincenttchen.typepad.fr/droit_des_etrangers/10_sanctions_pnales_et_administratives/

*an effective policy of removal and repatriation of illegally staying third-country nationals in a manner in keeping with fundamental rights”.*²⁰

In December 2011, the European Court of Justice ruled that penal sanctions against irregular migrants for the sole reason of their irregular stay were incompatible with the Returns Directive, and that the systematic detention of irregular migrants where incompatible with the Returns Directive if other coercive measures had not been exhausted first²¹. Although the Court did not rule against detention of migrants as such, it made clear that such decision should be made as a last resort.

Conclusion

In 2007, Statewatch expressed deep concerns with the respect to the adopted Returns Directive:

*“What is left is legislation which, if implemented, is likely to result in the spread of the worst expulsion practices, emphasising speedy removal over due process and human needs”.*²²

From access to health care, to the treatment by detention guards, evidence provided by recent reports give further substance to these concerns and raise doubts on whether principles enshrined in the Returns Directive can ever be a reality. Indeed, the Directive reads that:

“Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law”.

Yet, even when irregular stay is sanctioned under administrative law, some scholars question whether deprivation of liberty as such does not amount to disproportionate punishment, and criminalisation by an another name.

Juliet P. Strumpf²³, based on the US example, called this new phenomenon “crimmigration”, understood as the growing merging of immigration law and criminal law, a concept which academics tend to use more and more to describe the evolution of EU legislation (conference on “crimmigration” to be held in Coimbra, Portugal, in October 2012).²⁴

July 2012

© Statewatch ISSN 1756-851X. Personal usage as private individuals/"fair dealing" is allowed. We also welcome links to material on our site. Usage by those working for organisations is allowed only if the organisation holds an appropriate licence from the relevant reprographic rights organisation (eg: Copyright Licensing Agency in the UK) with such usage being subject to the terms and conditions of that licence and to local copyright law.

²⁰ ECJ (2011) Judgment in Case C-61/11 PPU Hassen El Dridi alias Soufi Karim, 28 April 2011, PRESS RELEASE No 40/11 <http://www.statewatch.org/news/2011/apr/ecj-dridi-press-rel.pdf>

Full-text judgment <http://www.statewatch.org/news/2011/apr/ecj-dridi-judgment.pdf>

²¹ ECJ (2011) C-329/11 Alexandre Achughbadian v Préfet du Val-de Marne <http://curia.europa.eu/juris/document/document.jsf?text=&docid=115941&pageIndex=0&doclang=EN&mode=doc&dir=&occ=first&part=1&cid=1624137>

²² Statewatch (2007) Statewatch analysis - The original EU Directive on return <http://www.statewatch.org/news/2007/apr/eu-expulsion-sw-analysis-I.pdf>

²³ Juliet Strumpf (2006) The crimmigration crisis: immigrants, crime, and sovereign power http://papers.ssrn.com/sol3/papers.cfm?abstract_id=935547

²⁴ 1st Annual Crimmigration Control Conference, 11-12 October 2012 <http://www.crimmigrationcontrol.com/newEnglish.php>