

## **ALTERNATIVES TO DETENTION FOR ASYLUM SEEKERS IN THE EU MADE REAL NEWSLETTER: SEPTEMBER 2013 – FEBRUARY 2014**

### **WHAT IS the MADE REAL PROJECT?**

*Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy & Learning*

#### **An academic/NGO partnership:**

- To address the knowledge and implementation gaps concerning alternatives to detention (ATD) for asylum seekers in the EU;
- to assist Member States in the transposition of the recast Reception Conditions Directive;
- to enhance the use of alternatives to detention in compliance with EU and international legal standards.

#### **How?**

- Research activities in Austria, Belgium, Lithuania, Slovenia, Sweden and UK;
- Trainings on ATD in 7 EU Member states: Bulgaria, France, Greece, Hungary, Malta, the Netherlands & Slovakia;
- A synthesis report and a training module on the basis of the findings
- Advocacy & communication at national & EU level.

#### **Where are we at?**

⇒ The practices and legal questionnaire have now been completed. Questionnaires cover the national legal framework on detention and ATD, access to remedies and national jurisprudence, the functioning of existing ATD, access to rights, cost effectiveness and evaluation mechanisms.

⇒ Research visits by coordination team are ongoing.

⇒ The 1<sup>st</sup> reference group in Budapest in January 2014 looked into the methodology and content of the training module.

The project is co-financed by the European Union through the European Refugee Fund 2012.

More information on the following link: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

Contact point: Alice Bloomfield, Project manager– [alicebloomfieldulb@gmail.com](mailto:alicebloomfieldulb@gmail.com)

### **Upcoming Odysseus Network EUROPEAN CONGRESS ON ASYLUM on 8<sup>th</sup> & 9<sup>th</sup> April in Brussels**

The 7<sup>th</sup> European Congress of the Odysseus Academic Network is devoted to the development of the Common European Asylum System. Each 2<sup>nd</sup> generation instrument will be analysed "vertically" through a general report presenting the novelties and measuring the progress accomplished towards more harmonization. In addition, a set of key questions will be analysed "horizontally" throughout all the instruments to evaluate their coherence by a panel of experts after each report.

Register quickly through our website: <http://www.ulb.be/assoc/odysseus/CEASE.html>

## NEWS FROM THE PARTNERS

### ADVOCATING FOR ALTERNATIVES TO DETENTION IN THE NETHERLANDS

Last year, the Ministry of Security and Justice promised to make the detention of undocumented migrants more humane. Several pilots implementing alternatives to detention were set up in September 2013 and the government (?) promised to lay down ATD in Dutch law. However, the proposed law on 'return and migrant detention', currently under review, is rather concise regarding laying down ATD by law, and does not fundamentally change the regime of detention. Furthermore, the new regime will now also apply to asylum seekers, who currently are under a less stringent regime. In parallel, another law is being prepared, to transpose the recast Procedures Directive and the recast Reception Directive. A positive point is that the Government recognizes that it has a border procedure. Negative points are that ATD are not explicitly mentioned, and the exceptions under which Member States can detain asylum seekers (art.8 RD) are interpreted in such a way that the Ministry considers the current practice in line with the recast RD.

One step forward however, is that the government is currently willing to look at ATD for families with minor children. The position of several NGOs is that all asylum seekers should be allowed to stay in open centers during their procedure, whether it is at the border or not. Unfortunately, the Ministry of interior is quite reluctant and the arguments used to justify detention at the borders include the application of the Schengen Border Code, protection of children from human trafficking, and expediency reasons. A practical example of why the current practice has to change: In 2013 there has been an increase of asylum seekers, including many of whom were families from Syria. All families were detained, but were eventually all granted refugee status and were allowed entry into the Netherlands. It is therefore the opinion of Justice and Peace that detention in these cases could have been avoided. With the help of the Made Real project, Justice and Peace Netherlands is lobbying for an individual assessment and the implementation of ATDs for asylum seekers. Hopefully, ATD will be introduced at least for (single) parent(s) with children, so that children will no longer be detained. From there, we will lobby for a wider application of ATD.

BY PRITHA BELLE ([JUSTITIA ET PAX](#))

### LEGAL SAFEGUARDS ON IMMIGRATION DETENTION

Immigration detention raises anxious concerns. This executive imprisonment, of 'foreigners', is widespread, and threatens to become routine. In such contexts, the rule of law must always find its voice. The following report, funded by the Nuffield Foundation, identifies 25 Safeguarding Principles intended to promote practical and effective protection under the rule of law. These progressive standards draw on legal instruments, promulgated standards, UNHCR and NGO Guidelines, working illustrations and judicial observations, extrapolated from national, regional and international contexts: 'Immigration detention and the rule of law' by M.Fordham, J.Stefanelli & S.Eser: [http://www.biicl.org/files/6559\\_immigration\\_detention\\_and\\_the\\_rule\\_of\\_law\\_web\\_version.pdf](http://www.biicl.org/files/6559_immigration_detention_and_the_rule_of_law_web_version.pdf)

During the forthcoming 14th édition of the **Odysseus network summer school in European Immigration and Asylum Law**, that will take place in Brussels from 30 June till 11 July 2014, a debate on detention and alternatives to detention will be organised :  
<http://www.ulb.ac.be/assoc/odysseus/Summer2014UK.html>

## **BULGARIA: NEW LAW ON DETENTION OF ASYLUM SEEKERS**

A new draft law introducing detention of asylum seekers was adopted by the Bulgarian government (Council of Ministers) on 19<sup>th</sup> November 2013. It proposes measures which, for the first time, limit the freedom of movement and provide for detention of asylum seekers in Bulgaria. The bill has been criticized for its incompatibility with EU law and international law standards. The bill was recently submitted to the plenary for a first parliamentary reading. For further reading, please read the article from Valeria Ilareva (Foundation for Access to Right): <http://blog.farbg.eu/the-council-of-ministers-bill-of-13-november-2013-proposes-measures-that-limit-the-freedom-of-movements-of-applicants-for-international-protection>

## **WHAT CHANGES PLANNED ON IMMIGRATION BAIL IN THE UK ?**

Two provisions in the draft Immigration Bill relating to applications for release on tribunal bail cause BID great concern. Both provisions involve the Secretary of State seeking to restrict detainees' access to the independent immigration tribunal, regardless of how long they have been held in detention, and to grant herself influence in what are currently independent decisions made by the Tribunal judiciary on whether or not a detainee should be released.

Clause 3 of the Bill requires the immigration tribunal to simply dismiss applications for bail made within 28 days of a previous refusal to release on bail, unless the detainee can demonstrate a material change in their circumstances. We believe this is both unnecessary and unsafe. Secondly, Clause 3 also provides that even if the Tribunal decides to grant release on bail within 14 days of a removal date, the detainee must not be released without the consent of the Secretary of State. The presumption of liberty is not displaced by imminence of removal, though the Bill seeks to do just this. This provision makes the Secretary of State (the detaining power) the only decision-maker in bail cases for the 14 days prior to the proposed date of removal once removal directions are set, allowing her to override the decisions of the independent court to which the detainee is applying to challenge her decision to maintain detention. In addition, provisions in the Bill designed to deny access to services will prohibit residence in rented accommodation for foreign nationals without leave to be in the UK, unless they have the permission of the Secretary of State, and will raise additional barriers to seeking release on bail for many detainees. Family and friends in rental accommodation may no longer be able to offer bail accommodation to detainees.

*Link to 'BID briefing on provisions in Immigration Bill relating to release from detention on immigration bail, January 2014', & 'BID briefing on provisions in Immigration Bill relating to residential tenancies that will affect detainees seeking release from detention on immigration bail, January 2014' :*

<http://www.biduk.org/154/consultation-responses-and-submissions/bid-consultation-responses-and-submissions.html>

*Link to the Immigration Bill as brought to the House of Lord :*

<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/14084.pdf>

*Link to explanatory notes prepared by the Home Office :*

<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.htm>

ADELINE TRUDE – BAIL FOR IMMIGRATION DETAINEES (BID)

## IDC EUROPE WORKSHOP ON ATD

The MADE REAL project team and a number of partners will participate in the upcoming Europe regional workshop on immigration detention organised by the International Detention Coalition (IDC) in Brussels on 27 & 28 March 2014. The workshop will focus on practical ways to engage with governments on alternatives to immigration detention and include a session on monitoring places of immigration detention. For more information: <http://idcoalition.org>

## RELEVANT PROJECTS AND EVENTS

Publishing of the report : **Point of No Return: The Futile Detention of Unreturnable Migrants** gathering qualitative research based on the experiences of 39 unreturnable migrants who have been detained in Belgium, France, Hungary & the UK :  
[http://pointofnoreturn.eu/wp-content/uploads/2014/01/Point\\_of\\_no\\_return.pdf](http://pointofnoreturn.eu/wp-content/uploads/2014/01/Point_of_no_return.pdf)

### A PROJECT ON JUDICIAL CONTROL AND PREREMOVAL DETENTION IN THE EU

The project CONTENTION (Control of Detention), co-funded by the EU in the framework of the European Return fund, is implemented by the Migration Policy Centre at the Robert Schuman Centre for Advanced Studies in partnership with the Odysseus Network (ULB). The main objective of the project is to inform, analyse and compare the EU Return Directive based judicial control of pre-removal detention of third-country nationals in 11 EU Member States (AT, BG, BE, CZ, DE, FR, IT, NL, SK, SI & UK) with a view to improving it, in particular regarding the control of the length of detention. The project seeks to identify and exchange best practices among legal experts and practitioners. More generally, CONTENTION aims to lay the foundation for the first European network of national judges hearing return cases, and to prepare the ground for further judicial cooperation and training of national judges in this field.

All JUDGES, LAWYERS, NGOs and any other person or institution can contribute to the project by providing NATIONAL CASE-LAW (as from 2008 till today) from the 11 Member States mentioned above and related to the interpretation and implementation of pre-removal detention in relation to articles 15 to 18 of the Return Directive. For more information, please refer to the project website : <http://contention.eu>

FOR THE MADE REAL PROJECT, THE ODYSSEUS ACADEMIC NETWORK IS WORKING IN PARTNERSHIP WITH DIAKONIE FLUCHTLINGSDIENST (AUSTRIA), COORDINATION ET INITIATIVES POUR ET AVEC LES RÉFUGIÉS ET ÉTRANGERS (BELGIUM), LEGAL CLINIC FOR REFUGEES AND IMMIGRANTS (BULGARIA), FRANCE TERRE D'ASILE (FRANCE), GREEK COUNCIL FOR REFUGEES (GREECE), HUNGARIAN HELSINKI COMMITTEE (HUNGARY), CENTRE FOR SUSTAINABLE SOCIETY (LITHUANIA), JESUIT REFUGEE SERVICE (MALTA), JUSTITIA ET PAX NEDERLAND (THE NETHERLANDS), SLOVAK HUMANITARIAN COUNCIL (SLOVAKIA), INSTITUTE FOR LEGAL RESEARCH, EDUCATION AND COUNSELLING (SLOVENIA), SWEDISH RED CROSS (SWEDEN), BAIL FOR IMMIGRATION DETAINEES (UK).

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