

TEMPLATE FOR WORKSHOP ON ALTERNATIVES TO DETENTION IN THE EU

MADE REAL PROJECT



Co-funded
by the European Union



INTRODUCTION SESSION

**WELCOME
PARTICIPANTS**

**INTRODUCE
YOURSELF/CO-TRAINERS**

**DESCRIBE
THE PROGRAMME**

**OUTLINE ADMINISTRATIVE
AND LOGISTIC ARRANGEMENTS**

**DISCUSS WORKSHOP
METHODOLOGY AND RULES**

INTRODUCTION

SESSION

BiD Bail for
Immigration
Detainees

CIRÉ
coordination et initiatives
pour réfugiés et étrangers

Diakonie Flüchtlingsdienst



iPRIS
International Prison
Refugee Initiative

**JUSTITIA
ET PAX**



ПРАВНА КЛИНИКА ЗА
БЕЖАНЦИ И
ИМИГРАНТИ

LEGAL CLINIC FOR
REFUGEES &
IMMIGRANTS

RödaKorset



**GREEK
COUNCIL
REFUGEES**

CENTER FOR SUSTAINABLE
SOCIETY LITHUANIA

THE MADE REAL PROJECT

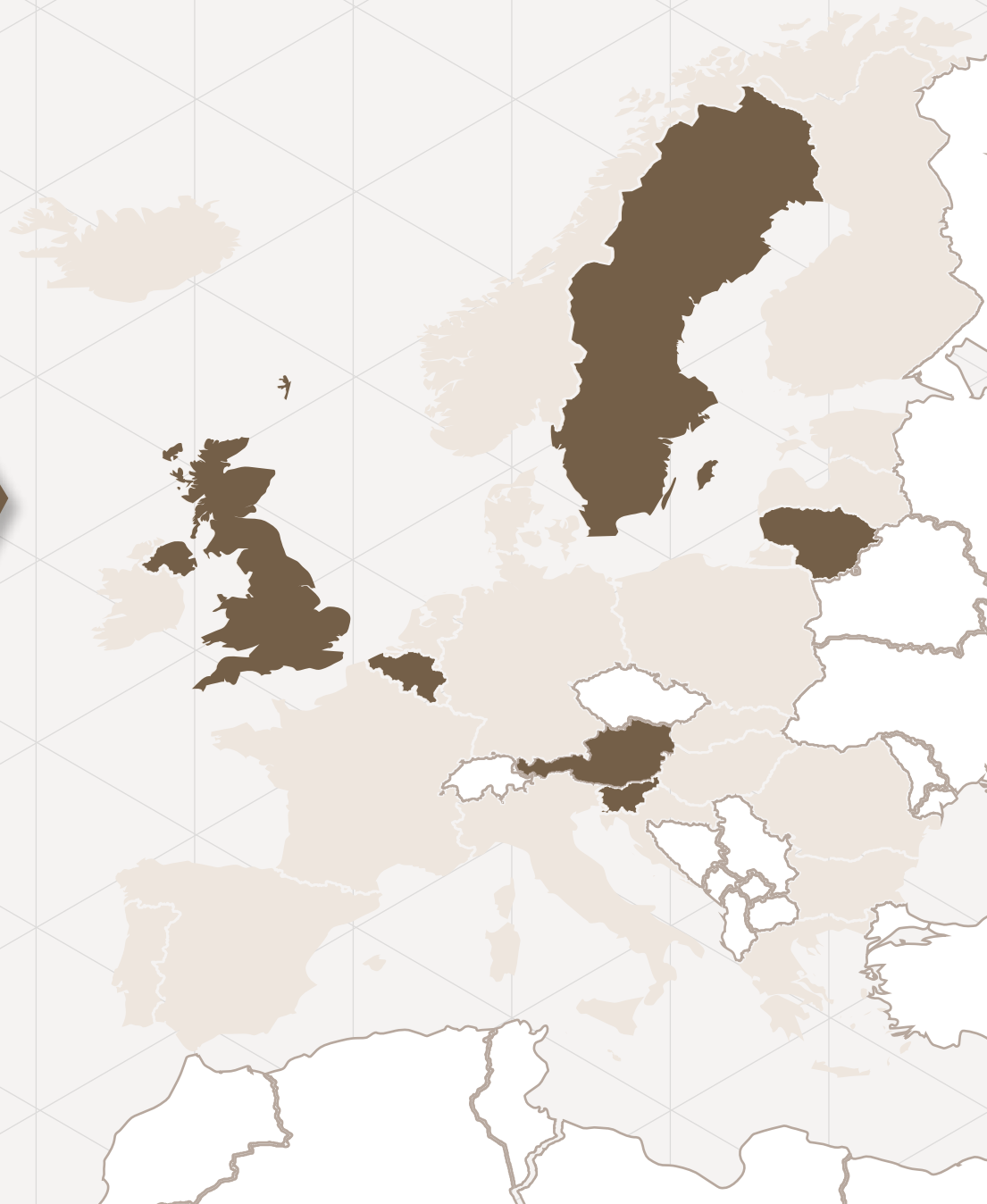
18 months project (September 2013- February 2015) co-financed by the EU which includes:

- **A report based on research** carried out in Austria, Belgium, Lithuania, Slovenia, Sweden and UK
- A training module based on the report followed by 2 one-day **training sessions** in Bulgaria, France, Greece, Hungary, Malta, the Netherlands and Slovakia, making use of training materials.
- A range of **advocacy & dissemination** activities at national and EU level to promote alternatives to detention including a final conference in Brussels presenting the results of the project (Feb 2015)

INTRODUCTION

SESSION

In the 1st phase (research):
AUSTRIA, BELGIUM, LITHUANIA,
SLOVENIA, SWEDEN AND UK.

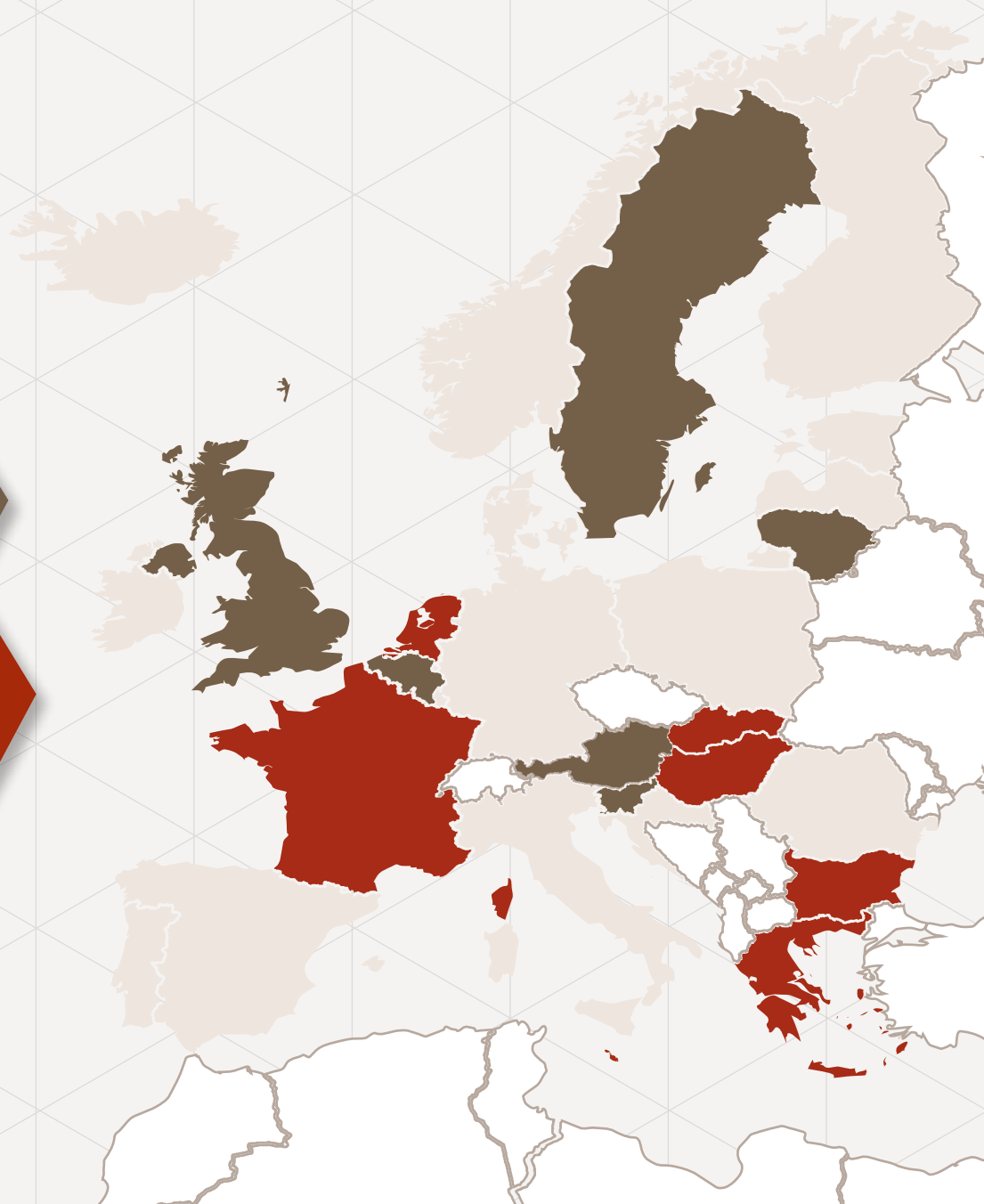


INTRODUCTION

SESSION

In the 1st phase (research):
AUSTRIA, BELGIUM, LITHUANIA,
SLOVENIA, SWEDEN AND UK.

In the 2nd phase (training):
BULGARIA, FRANCE, GREECE,
HUNGARY, MALTA,
THE NETHERLANDS AND SLOVAKIA.





INTRODUCTION SESSION

“ICE-BREAKER”

for the participants
to introduce themselves



INTRODUCTION SESSION

OBJECTIVES OF THE WORKSHOP

**WHAT ARE YOUR EXPECTATIONS FOR
THIS WORKSHOP?**

WHAT ARE YOUR SPECIFIC CONCERNS?

A close-up photograph of two hands shaking, symbolizing agreement or partnership. The hands are positioned diagonally across the frame, with the fingers interlaced. The lighting is warm, highlighting the texture of the skin.

INTRODUCTION SESSION

OBJECTIVES OF THE WORKSHOP

SOME OBJECTIVES OF THE MODULE

Improve knowledge about:

- What are alternatives to detention (ATD);
- the International, European and national legal framework on both detention and ATD;
- the different types of existing schemes and their practical implementation in selected EU countries
- the national legal framework and level of concrete implementation of ATD in your country.

Raise awareness about:

- The legal obligations for EU Member States to set up ATD in their national law;
- the advantages of increasing the use of ATD;
- Provide space for discussion at a national level on the effective transposition of EU directives in this field and on the opportunities to develop ATD further.

SESSION 01

CONTEXT OF ATD

SESSION 01

TOPICS COVERED BY THIS SESSION:

01

**THE DEFINITION AND THE RATIONALE
BEHIND IMMIGRATION DETENTION**

02

**THE NATIONAL CONTEXT ON DETENTION OF
ASYLUM SEEKERS AND MIGRANTS**

03

**THE REASONS FOR DEVELOPING
ALTERNATIVES TO DETENTION (ATD)**

SESSION 01

WHAT IS AN ATD?

WRITE ON A PAPER ELEMENTS OF YOUR UNDERSTANDING OF WHAT IS AN ATD, KEEP IT TILL THE END OF THE WORKSHOP TO SEE, AT THE END OF THE WORKSHOP IF YOUR UNDERSTANDING IS STILL THE SAME.



SESSION 01

THE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

WHAT IS IMMIGRATION DETENTION?

Main characteristics of immigration detention:

- Concerns a wide range of third country nationals regardless of their status (including people in need of protection such as asylum seekers, children and victims of trafficking)
- In practice, it can take place in a variety of places (specialised centers, airports, prisons, remand facilities etc.)
- It is administrative detention and not criminal detention
- Not a legal but a policy term to designate detention places where both asylum seekers and migrants are detained.

A. Edward's definition

Silverman and Massa definition

The European Migration Network definition



SESSION 01

THE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

A. Edward's definition

A. Edward's (UNHCR paper on alternatives to detention), "[t]he detention of refugees, asylum-seekers, stateless persons and other migrants, either upon seeking entry to a territory (front-end detention) or pending deportation, removal or return (back-end detention) from a territory. It refers primarily to detention that is administratively authorised, but it also covers judicially sanctioned detention"

WHAT IS IMMIGRATION DETENTION?

Main characteristics of immigration detention:

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SESSION 01

THE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

Silverman and Massa definition

Silverman and Massa define immigration detention as “[t]he holding of foreign nationals, or non-citizens, for the purposes of realizing an immigration-related goal. This definition is characterized by three central elements: first, detention represents a deprivation of liberty; second, it takes place in a designated facility in the custody of an immigration official; and third, it is being carried out in the service of an immigration-related goal »

WHAT IS IMMIGRATION DETENTION?

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SESSION 01

THE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

The European Migration Network definition

The European Migration Network describes it as “[a] non-punitive administrative measure applied by the state to restrict the movement through confinement of an individual in order for another procedure to be implemented »

WHAT IS IMMIGRATION DETENTION?


Main characteristics of immigration detention:

- Concerns a wide range of third country nationals regardless of their status (including people in need of protection such as asylum seekers, children and victims of trafficking)
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SESSION 01

THE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

WHY DETAIN ASYLUM SEEKERS?

WHY DETAIN MIGRANTS?



SESSION 01



THE DETENTION OF MIGRANTS AND ASYLUM SEEKERS

WHY DETAIN ASYLUM SEEKERS? WHY DETAIN MIGRANTS?

It is about finding the right balance between the legitimate right of States to control the entry and stay of non-nationals on their territory and the right to liberty and security of asylum-seekers and migrants.

In practice, detention is usually justified by:

- practical considerations: identity checks or public health screenings at arrival;
- enforcement related motivations: securing public order or carrying forced returns;
- political arguments: to prevent any further arrivals or to protect home societies

SESSION 01

IMMIGRATION DETENTION IN YOUR COUNTRY INTO PERSPECTIVE

Who is detained?

What is the maximum length in law for the detention of asylum seekers and for the detention of migrants?(specify if different or not)

What is the immigration detention capacity (number of placed in detention centers)?

Where are migrants and asylum seekers detained?



SESSION 01

WHAT ABOUT ELSEWHERE IN EUROPE?

	Asylum requests in 2013	Foreigners detained	AS detained in 2013	Foreigners submitted to ATD (including AS)	AS submitted to an ATD	Detention capacity (n° places)
AUSTRIA	17442	4171	741	771	523 AS	About 1600
BELGIUM	11965	6285	Between 1000 and 1500	159	42 families	516
LITHUANIA	250	363	106	20	10 AS	76
SLOVENIA	240	425	62	17	4 AS	220
SWEDEN	54255	About 3500	Number of AS n/a	405	Number of AS n/a	235
UK	28950	30387	14145 (including 2482 in the detained fast track)	n/a	n/a	About 4000

SESSION 01

WHAT DOES ATD SEEK TO ADDRESS?

INCREASE IN IMMIGRATION DETENTION WORLDWIDE YET:

- Inefficiency of detention
- High cost of detention
- Negative consequences of detention on mental & physical health
- Negative impact of detention on the interaction between the individual and state authorities



“Every month I got pressure on my mind, every month it was like torture, because they knew I can’t get my birth certificate, but still they put the pressure on me every month, every month” While in detention Hafez was refused bail four times. During his detention he tried to procure travel documents to leave the UK but was unable to provide a birth certificate.

video on migrant testimony on detention

SESSION 01

WHAT DOES ATD SEEK TO ADDRESS?

COMPARED TO DETENTION, ATD ARE:

- Cheaper
- More Human rights compliant
- Enables better future integration and collaboration of the AS in the Refugee Status Determination procedure and other administrative procedures.

SESSION 01

WHY IS IT IMPORTANT TO EXPLORE ATD?



COMPARED TO DETENTION, ATD ARE:

- Policy choice to reduce the negative impact of detention on individuals concerned
- Legal obligation to examine more lenient measures before resorting to detention (see session 2 & 3)

“[a] way to achieve effective migration management, while protecting the rights and dignity of migrants”

R. Sampson and G. Mitchel

SESSION 02

**THE LEGAL PRINCIPLES
REGULATING DETENTION AND
ALTERNATIVES TO DETENTION**

SESSION 02

TOPICS COVERED BY THIS SESSION:

01

RIGHT TO LIBERTY AND SECURITY AND PERMISSIBLE LIMITATIONS IN THE CONTEXT OF HUMAN RIGHTS LAW

02

THE LEGAL SPECIFICITIES OF IMMIGRATION DETENTION:
Pre-deportation detention, Asylum-seekers detention

03

THE EU FRAMEWORK ON DETENTION AND ALTERNATIVES TO DETENTION: The Recast Reception Conditions Directive, The Return Directive

04

DEFINITION OF ALTERNATIVES TO DETENTION

SESSION 02.1

PERSONAL LIBERTY AS A FUNDAMENTAL RIGHT

- The right to liberty and security is guaranteed in International, European and EU law as fundamental to a democratic society:

Article 9 ICCPR

Article 5 ECHR CtHR

Article 6 EUCFR

- Presumption in favour of personal liberty but no absolute protection against deprivation of liberty
- Deprivation of liberty needs to be distinguished from restrictions on the freedom of movement.
- Starting point for the appreciation: type, duration, effects and manner of implementation of the measure.
- Difference is however one of degree or intensity and not one of nature or substance.

SESSION 02.1

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

→ The right to liberty and security is guaranteed in International, European and EU law as fundamental to a democratic society:

Article 9 ICCPR

Article 5 ECHR CtHR

Article 6 EUCFR

- Presumption in favour of personal liberty but no absolute protection against deprivation of liberty
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SESSION 02.1

Right to liberty and security'

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) 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.

→ The right to liberty and security is guaranteed in International, European and EU law as fundamental to a democratic society:

Article 9 ICCPR

Article 5 ECHR CtHR

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SESSION 02.1

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SESSION 02.1

THE NOTION OF “ARBITRARINESS”

“It is not the deprivation of liberty itself that is disapproved of but rather that which is arbitrary and unlawful”

M. Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, 2005.

**The notion of arbitrariness
is the cornerstone of the system.**

SESSION 02.1

**THE NOTION OF
“ARBITRARINESS”**

**SHARE YOUR EXPERIENCE:
HOW DO YOU UNDERSTAND
ARBITRARINESS ?**



SESSION 02.1

A black silhouette of a balance scale is centered on the left side of the slide. The scale has a horizontal beam with a hook on the left and a circular pan hanging from the right by three chains. The background is a light gray with a subtle geometric pattern of overlapping triangles.

THE NOTION OF “ARBITRARINESS”

- The notion of arbitrariness includes compliance with the law but goes beyond that

HRC, Hugo van Alphen

- In order to decide whether deprivation of liberty was arbitrary, apart from conformity with national law, the ECtHR will pay attention to:
 - The absence of bad faith while deciding on detention;
 - The link between detention and the ground for detention invoked;
 - The conditions, place and length of detention which should not exceed the time reasonably required for the purpose pursued by detention.

**The notion of arbitrariness
requires detention to be necessary
and proportionate!**

SESSION 02.1



" [...] Arbitrariness is not to be equated with the terms 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all circumstances. Furthermore, remand in custody must be necessary in all circumstances".HRC, Hugo van Alphen v. The Netherlands, Comm. n°305/1998, §5.8.

- The notion of arbitrariness includes compliance with the law but goes beyond that

HRC, Hugo van Alphen

- In order to decide whether deprivation of liberty was arbitrary, apart from conformity with national law, the ECtHR will pay attention to:
 - The absence of bad faith while deciding on detention;
 - The link between detention and the ground for detention invoked;
 - The conditions, place and length of detention which should not exceed the time reasonably required for the purpose pursued by detention.

**The notion of arbitrariness
requires detention to be necessary
and proportionate!**

The background of the slide is a photograph of a man in profile, looking through a chain-link fence. The scene is set at sunset or sunrise, with a warm, golden light illuminating the sky and the fence. The man is wearing a dark jacket. The overall mood is contemplative and somber.

SESSION 02.1

NECESSITY AND PROPORTIONALITY OF DETENTION

SHARE YOUR EXPERIENCE:

**HOW DO YOU ASSESS THE NECESSITY
AND PROPORTIONALITY OF
DETENTION IN PRACTICE?**

A person is seen from the chest up, looking through a chain-link fence. The person's face is partially obscured by the fence, and their hand is visible near their face. The background shows some foliage and a bright light source, possibly the sun, creating a high-contrast scene.

SESSION 02.1

NECESSITY AND PROPORTIONALITY OF DETENTION

- Necessity test = National authorities have to verify for each profile whether there were not less coercive measures in order to achieve the same ends.
- Proportionality test = A fair balance must be struck between the protection of the general interest and the protection of an individual's fundamental rights.

In this context, the question of whether to implement or not an alternative measure to detention arises.

SESSION 02.1

MAIN POINTS

- The right to liberty and security of person is fundamental to a democratic society.
- It is not an absolute right however there is a presumption in favour of liberty.
- Detention should not be arbitrary; the notion of arbitrariness extends beyond the notion of lawfulness.
- Detention shall be necessary and proportionate.

Detention shall be an exceptional measure of last resort.

SESSION 02.2

THE LEGAL SPECIFICITIES OF IMMIGRATION DETENTION

ECHR Article 5§1 point b): « the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law »

ECHR Article 5§1 point f): « 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. »

HUMAN RIGHTS LAW

- Article 9§1 ICCPR is applicable in all deprivation of liberty, including in cases of immigration control (General Comment n°8 of the HRC). No permissible grounds for detention are explicitly enumerated in the provision.
- Article 5 ECHR contains an exhaustive enumeration of exceptions to the right to liberty and security.
- Article 5§1 points b) and f) of the ECHR are relative in the context of immigration detention.

Article 5§1 points b) and f)

- Article 5§1 (f) tackles two situations :
 - Pre-deportation detention = Return context
 - Pre-admission detention = Asylum context

SESSION 02.2

THE LEGAL SPECIFICITIES OF IMMIGRATION DETENTION



HIGHLIGHTS FROM THE ECtHR'S JURISPRUDENCE

→ Pre-deportation detention

- shall be lawful and non-arbitrary but it is not required to be necessary
- although necessity is not required, pre-deportation detention shall be closely linked to an imminent expulsion
- states shall conduct the relevant proceeding in view of expulsion with due diligence, in order to justify the recourse to detention.

→ Pre-admission detention

- Pursuant to Article 5§1 f) first limb of the ECHR, detention of asylum seekers is not per se arbitrary
- As pre-deportation detention, deprivation of liberty of asylum seekers is not required to be necessary but must be lawful and non-arbitrary

However: if necessity test is established in national law failure to meet it renders the detention arbitrary (case of all EU MS).

In all cases: The ECtHR pays attention to the conditions, place and length of the detention measure if inappropriate detention will be arbitrary and in breach of Article 5§1f) ECHR

SESSION 02.2

THE LEGAL SPECIFICITIES OF ASYLUM SEEKERS DETENTION

REFUGEE LAW

- Article 31 of the 1951 Refugee Convention
 - §1 non-penalisation clause
 - §2 restrictively applicable exceptions
- No ground for detention established in the 1951 Refugee Convention. UNHCR has tried to fill this gap:
 - Verification and/or recording of information
 - Protection of national security, public order, and public health
 - To prevent absconding and/or in cases of likelihood of non cooperation
- **Only provisional detention of asylum seekers is permissible!**
- As only provisional detention is permitted, asylum seekers benefit from freedom of movement [Art. 26, 1951 Refugee Convention]

Principle: Freedom of movement for asylum seekers (Art.26)

Exception: Provisional detention (Art.31§2)

SESSION 02.2

MAIN POINTS

- Immigration detention encompasses two types of situations:
 - Pre-deportation detention
 - Pre-admission detention: the specific case of asylum seekers detention
- According to the ECtHR, in both cases, Article 5§1f) does not demand the detention to be necessary.
- However, pre-deportation detention shall be closely linked to an imminent expulsion and States have to prove that they act with due diligence.
- Asylum seekers detention:
 - The 1951 Refugee Convention:
 - *Principle: Freedom of movement
 - *Exception: Provisional detention
 - ECHR:
 - *Asylum seekers can be detained
 - *Conditions, place and length under scrutiny

SESSION 02.3

THE EU FRAMEWORK

SOME INTRODUCTORY ELEMENTS

- “Immigration detention” under EU law is regulated by two distinct legal instruments
- Detention of asylum seekers → rRCD [Directive 2003/9/CE; recast Directive 2013/33/EU]
- Detention of those issued with a return decision → RD [Directive 2008/115/EC]

SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RECAST RCD

SOME INTRODUCTORY ELEMENTS

- 2003 instrument: “detention with another name”; a number of MS contesting the applicability of the RCD for detained asylum seekers
- Detailed regulation in Arts 8-11 RRCD
 - *A person cannot be held in detention for the sole reason that he or she is an applicant* (art.8§1).
 - obligation to apply a necessity and proportionality test (Art. 8§2, Rec. 15);
 - explicit obligation to conduct an individualized assessment in each case
 - alternatives have to be developed and considered (Art.8§4, Rec. 20);
 - exhaustive list of detention grounds (Art. 8§3);
 - timeframe: “as short a period as possible” (Art. 9§1, Rec. 16 on ‘due diligence’);
 - set of procedural guarantees (Art. 9, Rec. 15).

SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RECAST RCD

However:

- the detention grounds are broadly defined

definition of the detention grounds

- detention of asylum seekers can take place in prison accommodation; (Art. 10 para 1)
- very weak standards for vulnerable A/S who are not exempted from detention; (Art. 11 para 1)
- no clear-cut exemption of unaccompanied children, detention permissible “in exceptional circumstances” (Art. 11 para 3)

SESSION 02.3

An applicant may be detained only:

- (a) in order to determine or verify his or her identity or nationality;
- (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- (d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (2), in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- (e) when protection of national security or public order so requires;
- (f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (3).

The grounds for detention shall be laid down in national law.

However:

- the detention grounds are broadly defined

definition of the detention grounds

- detention of asylum seekers can take place in prison accommodation; (Art. 10 para 1)
- very weak standards for vulnerable A/S who are not exempted from detention; (Art. 11 para 1)
- no clear-cut exemption of unaccompanied children, detention permissible “in exceptional circumstances” (Art. 11 para 3)

SESSION 02.3

ALTERNATIVES TO DETENTION IN THE RECAST RCD

FOCUS

- Explicit obligation to consider less coercive alternative measures
- Rules concerning alternative schemes shall be established in national legislation
- A non-exhaustive list of schemes: regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place
- Alternatives= “non-custodial”; must respect the fundamental human rights of applicants

SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RD

3 cumulative conditions for the imposition of a detention measure (art.15§1):

- 1.** Preparation of the return and/or the execution of the removal process;
- 2.** Risk of absconding or tentative to avoid or hamper the return procedure;
- 3.** Other less invasive measures cannot be applied effectively (principles of necessity and proportionality)



SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RD

SHARE YOUR EXPERIENCE:

**HOW DO YOU ASSESS THE RISK OF
ABSCONDING IN PRACTICE IN THE
FRAMEWORK OF RETURN?**

A close-up, profile view of a man's face, looking downwards. The image is partially obscured by text overlays.

SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RD

- Timeframe: “as short a period as possible” and “due diligence” requirement (Art. 15 para 1)
- if reasonable prospects of removal no longer exists, the individual shall be released, as detention is no longer justified (art.15§4)
- however: detention can go up to 18 months if lack of cooperation or delays in obtaining the necessary documentation (Art. 15 para 6)

SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RD

- set of procedural guarantees: possibility to challenge the detention; review etc.

Art. 15 paras. 2-3

- weak guarantees for vulnerable groups“

Art. 16, para 3

- no clear-cut exemption of unaccompanied children

Art. 17 para 1

SESSION 02.3

2. Detention shall be ordered by administrative or judicial authorities. Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned

about the possibility of taking such proceedings. The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

- set of procedural guarantees: possibility to challenge the detention; review etc.

Art. 15 paras. 2-3

- weak guarantees for vulnerable groups“

Art. 16, para 3

- no clear-cut exemption of unaccompanied children

Art. 17 para 1

SESSION 02.3

Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.

- set of procedural guarantees: possibility to challenge the detention; review etc.

Art. 15 paras. 2-3

- weak guarantees for vulnerable groups“

Art. 16, para 3

- no clear-cut exemption of unaccompanied children

Art. 17 para 1

SESSION 02.3

Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

- set of procedural guarantees: possibility to challenge the detention; review etc.

Art. 15 paras. 2-3

- weak guarantees for vulnerable groups“

Art. 16, para 3

- no clear-cut exemption of unaccompanied children

Art. 17 para 1

SESSION 02.3

DETENTION AND ALTERNATIVES IN THE RD

SHARE YOUR EXPERIENCE:

**ARE VULNERABLE INDIVIDUALS HELD
IN THE FRAMEWORK OF RETURN?
HOW OFTEN?**





SESSION 02.3

ALTERNATIVES TO DETENTION IN THE RECAST RCD

FOCUS

- Detention as the exception (only if less coercive measures cannot be applied effectively)
- Obligation to consider alternatives to detention both before resorting to detention and at the time of examining the possibility to extend detention
- No clear obligation to establish rules in national legislation, thus administrative practice would be enough
- No explicit examples of alternatives to detention in the form of an open-ended list

SESSION 02.3

MAIN POINTS

- In both frameworks (return and asylum), detention is considered as an exceptional measure of last resort, as there is an obligation to examine less coercive alternative measures first.
- Both instruments point to an individualised assessment in compliance with the principles of necessity and proportionality
- Both instruments establish a number of procedural guarantees; however the provisions relating to vulnerable individuals fail to effectively safeguard their rights.
- The RRCD is more advanced in the area of ATD: it requires Member States to establish in their national legislations rules concerning alternatives; it also specifies that such schemes should respect the fundamental human rights of applicants.

SESSION 02.4

EU DEFINITION OF ALTERNATIVES IN THE FRAMEWORK OF IMMIGRATION DETENTION

- The recast Reception Conditions directive confirms the principle of freedom of movement of asylum seekers. (Art 7 rRCD)
- The directive recognises some permissible restrictions to their freedom of movement
- However, these must never reach the level of deprivation of liberty which is regulated by a different set of provisions (Arts 8-11 rRCD)

Asylum seekers should be allowed to live in the community or in designated centres where services are provided centrally while waiting for the result of their asylum application

SESSION 02.4

EU DEFINITION OF ALTERNATIVES IN THE FRAMEWORK OF IMMIGRATION DETENTION

ATD IN THE EU ARE:

- Measures only applicable to those exceptionally liable for detention on the basis of one of the 6 detention grounds in rRCD
- Non-custodial measures which respect the fundamental rights of asylum seekers
- Measures which must be detailed in national legislation; practice is not enough
- Measures which enable those liable for detention to live either in the community or in designated places but with freedom of movement
- Measures which could include some limitations in the freedom of movement of individuals subject to them
- Measures of different degrees of coerciveness, and decision-makers must only use means that are necessary, reasonable and proportionate to the particular legitimate aim being pursued

SESSION 02.4

EU DEFINITION OF ALTERNATIVES IN THE FRAMEWORK OF IMMIGRATION DETENTION

ATD IN THE EU ARE NOT:

- Restrictions on the freedom of movement applicable to all asylum seekers, eg. curfew in a reception center
- Conditions imposed on individuals during their voluntary departure period,
- Tolerated stay for those who cannot be returned
- Better detention conditions
- Mechanisms to release individuals from detention

SESSION 02.4

ALTERNATIVES TO DETENTION OR ALTERNATIVE FORMS OF DETENTION?



Case study n.1

In Slovenia, an asylum seeker subject to an alternative to detention is placed in the Asylum Home. This is normally an open reception centre, however asylum seekers under an alternative placed there are under an obligation not to leave the Asylum Home. They may circulate within the premises but not outside. Within the Asylum home, they enjoy the same rights as other asylum seekers, such as access to a number of social and cultural activities. They are also free to wear their own clothes, while in the Aliens Centre, detainees wear uniforms provided by the Centre. **Is this an ATD?**

Case study n.2

SESSION 02.4

ALTERNATIVES TO DETENTION OR ALTERNATIVE FORMS OF DETENTION?



Case study n.2

In the UK, some migrants or asylum seekers are subject to electronic tagging. Practically, a receiver is placed in the individual's home and an electronic bracelet is fitted around the individual's ankle to gather information about whether she is in her home at specific times. **Is this an ATD?**

Case study n.1

SESSION 03

**DECISION MAKING ON DETENTION
AND ALTERNATIVES
TO DETENTION**

SESSION 03

TOPICS COVERED BY THIS SESSION:

01

**ASCERTAINING THE EXISTENCE OF A
GROUND FOR DETENTION**

02

**ASSESSING THE INDIVIDUAL PROFILE; FOCUS
ON THE ASSESSMENT OF VULNERABILITY**

03

**SELECTING THE TYPE/VARIANT
OF THE ALTERNATIVE**

04

THE RIGHT TO AN EFFECTIVE REMEDY

SESSION 03.1

ASCERTAINING THE EXISTENCE OF A GROUND FOR DETENTION

- Existence of a ground for detention: 1st step in the decision-making process
- **Neither detention nor alternatives to detention can be applied if there is no valid ground for detention!**
- The existence of a ground for detention does not constitute a reason not to apply alternatives
- The fact that applicants are subject to special procedures (such as border, Dublin or accelerated) is not itself a reason not to apply alternatives

SESSION 03.1

EXAMINING THE DETENTION GROUNDS IN THE RECAST RCD

1. in order to determine or verify his or her identity or nationality;
2. in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
3. in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

SESSION 03.1

**EXAMINING THE
DETENTION GROUNDS IN
THE RECAST RCD**

**ACCORDING YOUR OPINION HOW
LONG CAN AN ASYLUM SEEKER BE
HELD ON THE BASIS OF THE FIRST
GROUND?**

**HOW CAN THE THIRD GROUND BE
APPLIED IN COMPLIANCE WITH THE
PRINCIPLE OF NECESSITY?**



SESSION 03.1

EXAMINING THE DETENTION GROUNDS IN THE RECAST RCD

4. In the framework of a return procedure when the Member State concerned can substantiate on the basis of objective criteria that there are reasonable grounds to believe that the person tries to delay it by introducing an asylum application;
5. In the framework of a procedure for the determination of the Member State responsible for the asylum application under the so-called “Dublin” III regulation when there is a significant risk of absconding;
6. For the protection of national security or public order.

SESSION 03.1

EXAMINING THE DETENTION GROUNDS IN THE RECAST RCD

What type of 'objective criteria' would suffice according to your opinion to substantiate that there are 'reasonable grounds' to believe that a person in a return process introduces an asylum procedure merely to delay their return?

Which factual elements could point to 'significant risk of absconding'?

Which factual situations could fall according to your experience under the final ground (protection of national security/public order)?

SESSION 03.1

FOCUS ON THE RISK OF ABSCONDING

→ Not defined in the RRCD, but in Article 2n) of the Dublin Regulation

Article 2n)

→ Importance of an objective, transparent and individualized assessment of the likelihood of the applicant to disappear during the asylum procedure based on a series of criteria

SESSION 03.1

“Risk of absconding” means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third- country national or a stateless person who is subject to a transfer procedure may abscond.

→ Not defined in the RRCD, but in Article 2n) of the Dublin Regulation

Article 2n)

→ Importance of an objective, transparent and individualized assessment of the likelihood of the applicant to disappear during the asylum procedure based on a series of criteria

SESSION 03.2

ASSESSING THE INDIVIDUAL PROFILE

FOCUS ON THE ASSESSMENT OF VULNERABILITY

- The respect of the principles of necessity and proportionality entail an obligation to conduct an individual assessment
- Detention should be conceived as a measure of last resort, only if less coercive measures could not achieve the same result, bearing in mind the individual profile (such as age, gender and diversity, physical and mental health, family situation and any known past behaviour)
- In this framework, the assessment of vulnerability and its consequences are of great importance as in many circumstances detaining vulnerable individuals could render detention unlawful



“In the night time I can’t sleep, and you don’t have anyone to go to; and you don’t have anywhere to go out, and get some fresh air, and maybe have a walk or something, we are just inside, I think that really is depressing. I’ve seen other people suffering, because you think you are suffering, and then you see someone else suffering even more than you”.

SESSION 03.2

ASSESSING THE INDIVIDUAL PROFILE

SHARE YOUR EXPERIENCE:

What is the meaning of the notion of vulnerability?

Who should be considered as vulnerable?

Are vulnerable individuals held in the framework of asylum? How often?

Are unaccompanied minors also held? What are, if any, according to your experience the 'exceptional circumstances' that could make detention necessary and proportionate in this case?

SESSION 03.2

THE EU LEGAL FRAMEWORK ON VULNERABILITY

- Non exhaustive list of vulnerable persons

Article 21 RRCD

- The notion of “applicant with special reception needs” (Article 2, point k, RRCD)

Art 2.k RRCD

- ‘persons with special reception needs’ = sub-category of vulnerable persons
- Identification of vulnerability is a necessary prerequisite but the obligation for MS remains implicit

Art 22 RCD

- Assessment may be integrated in an existing national procedure; need not take the form of an administrative procedure
- Findings on special reception needs ‘without prejudice’ to the asylum procedure
- A set of specific guarantees for minors, unaccompanied minors and victims of torture and trauma (RRCD Art. 23-25)

SESSION 03.2

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

- Non exhaustive list of vulnerable persons

Article 21 RRCD

- The notion of “applicant with special reception needs” (Article 2, point k, RRCD)

Art 2.k RRCD

- ‘persons with special reception needs’ = sub-category of vulnerable persons
- Identification of vulnerability is a necessary prerequisite but the obligation for MS remains implicit

Art 22 RCD

- Assessment may be integrated in an existing national procedure; need not take the form of an administrative procedure
- Findings on special reception needs ‘without prejudice’ to the asylum procedure
- A set of specific guarantees for minors, unaccompanied minors and victims of torture and trauma (RRCD Art. 23-25)

SESSION 03.2

‘applicant with special reception needs’: means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

- Non exhaustive list of vulnerable persons

Article 21 RRCD

- The notion of “applicant with special reception needs” (Article 2, point k, RRCD)

Art 2.k RRCD

- ‘persons with special reception needs’ = sub-category of vulnerable persons
- Identification of vulnerability is a necessary prerequisite but the obligation for MS remains implicit

Art 22 RCD

- Assessment may be integrated in an existing national procedure; need not take the form of an administrative procedure
- Findings on special reception needs ‘without prejudice’ to the asylum procedure
- A set of specific guarantees for minors, unaccompanied minors and victims of torture and trauma (RRCD Art. 23-25)

SESSION 03.2

THE EU LEGAL FRAMEWORK ON VULNERABILITY

In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

- Non exhaustive list of vulnerable persons

Article 21 RRCD

- The notion of “applicant with special reception needs” (Article 2, point k, RRCD)

Art 2.k RRCD

- ‘persons with special reception needs’ = sub-category of vulnerable persons
- Identification of vulnerability is a necessary prerequisite but the obligation for MS remains implicit

Art 22 RCD

- Assessment may be integrated in an existing national procedure; need not take the form of an administrative procedure
- Findings on special reception needs ‘without prejudice’ to the asylum procedure
- A set of specific guarantees for minors, unaccompanied minors and victims of torture and trauma (RRCD Art. 23-25)

SESSION 03.2

ASSESSMENT OF VULNERABILITY: SOME OF THE RESEARCH FINDINGS

- *Vulnerability often loses the battle with the perceived necessity to detain.*
- Minor children and families are generally exempted from detention:
 - *Return Houses in Belgium
 - *Family Return Process in the UK
- As a main rule, there is a failure to take into consideration other forms of vulnerability in the detention decision-making process
- Guidelines on early identification and training could help address this gap.

SESSION 03.3

SELECTING THE TYPE/ VARIANT OF THE ALTERNATIVE

- Alternatives to detention could include obligations involving different levels of coerciveness
- These obligations often include restrictions in the freedom of movement necessary and proportionate
- Principles of necessity and proportionality individualised assessment when deciding on the particular alternative to be imposed
- Authorities have to pay attention to different factors: type, duration, effect and manner of implementation
- ATD: non-custodial and respect for fundamental rights = way of implementation under scrutiny to prevent alternative forms of detention and violations of fundamental rights

SESSION 03.3

ROLE PLAY ON DECISION-MAKING

1

Break out in smaller groups of 5. Each group should be composed of the following characters:

- the national decision-maker
- the migrant/asylum seeker
- their lawyer arguing against detention
- a representative of the administration arguing for the detention
- the observer, who will be taking notes & report back to the plenary.

2

The group has 5 mins to read the case. After hearing the arguments for and against the imposition of detention or alternatives by both sides (15 mins) the national decision-maker must take a position on whether detention or alternatives should be applied (and if so which alternative) and justify it (5 mins).

3

At the end of the exercise, the “observers” from the several smaller groups will report back to the whole group for a total maximum duration of 10 minutes.



SESSION 03.4

RIGHT TO AN EFFECTIVE REMEDY

- Article 13 ECHR and Article 47 EUCFR guarantee the right to an effective remedy
- The right to an effective remedy in the context of a detention order is clearly established in the RRCD

Rec. 15, Art. 9§§ 3-6

- Judicial review and the right to appeal a detention order are guarantees of the lawfulness of detention
- Does the implementation of the alternative infringe right to liberty and security? right to appeal the imposition of an alternative
- Does the implementation of the alternative infringe other fundamental rights? right to appeal the imposition of an alternative
- The ATD decision should state the detention ground invoked to justify its implementation

SESSION 03.4

The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.

- Article 13 ECHR and Article 47 EUCFR guarantee the right to an effective remedy
- The right to an effective remedy in the context of a detention order is clearly established in the RRCD

Rec. 15, Art. 9 §§ 3-6

- Judicial review and the right to appeal a detention order are guarantees of the lawfulness of detention
- Does the implementation of the alternative infringe right to liberty and security? right to appeal the imposition of an alternative
- Does the implementation of the alternative infringe other fundamental rights? right to appeal the imposition of an alternative
- The ATD decision should state the detention ground invoked to justify its implementation

SESSION 03.3

EXERCISE ON CASE-LAW

1

You can either break out in pairs or have each participant working individually. The objective of the exercise is to build all stages of legal argumentation for the imposition of alternatives to detention in a concrete case. Participants can either be the lawyer of the applicant preparing their submission to the Court or the judge who has made her decision and is drafting the decision in favour of the imposition of alternatives.

2

Each participant/pair has 5 mins to read the case. After that they have 20 mins to (discuss and) summarily write down the stages of legal argumentation for the imposition of alternatives, including relevant legal provisions.

3

At the end of the exercise, you return in plenary and discuss the different steps of the argumentation. You can make use of the following slide providing a basic structure of the decision-making process.



SESSION 03.3

DECISION-MAKING: GENERAL PRINCIPLES

**IS THERE A GROUND
FOR DETENTION ?**

YES.

Is detention necessary
and proportionate for
the individual profile?

YES.

Detention is imposed. It can be
challenged and should be regularly
reviewed.

NO.

This means that there
is also no legal basis to
impose an alternative.

NO.

On the basis of the profile, the aims
pursued can be achieved through a less
coercive measure.

The individual is subject to an ATD. The
type of alternative and the variation is
decided on the basis of the individual
profile. It can be challenged and should
be regularly reviewed.

SESSION 03.3

TOOLS FOR ACCESSING RELEVANT CASE-LAW

- [Refugee Law Reader](#)
- [CJEU](#)
- [ECHR](#)
- [European Database of asylum law](#)
- [Refugee caselaw site](#) (University of Michigan Law School)
- [Refworld](#) (UNHCR)
- FRA, *Handbook on European law relating to asylum, borders and immigration*, (2014) pages 141-171 and 215-226

SESSION 04

**PRATICAL IMPLEMENTATION
OF ATD**

SESSION 04

TOPICS COVERED BY THIS SESSION:

01

**PRESENTATION OF THE SOME SCHEMES
USED IN EUROPE; INCLUDING THEIR
STRENGTHS AND WEAKNESSES**

02

**THE MAIN ELEMENTS TO TAKE INTO ACCOUNT
WHEN IMPLEMENTING THESE SCHEMES,
INCLUDING ENSURING ACCESS TO RIGHTS FOR
THOSE SUBMITTED TO THESE MEASURES.**

SESSION 04

FROM LIBERTY TO DETENTION

LIBERTY

**ALTERNATIVES
TO DETENTION:**

DETENTION

**REPORTING
SPONSORSHIP
FINANCIAL GUARANTEE
DESIGNATED RESIDENCE
ELECTRONIC TAGGING
ETC.**

SESSION 04

REPORTING

Some important factors to consider when applying these measures are the following:

- The environment (if it is done at an administration or at a police station);
- the frequency of the reporting requirements (reporting once a day is considerably different than reporting once a week or month);
- the way in which the authorities will impose sanctions if the person doesn't come at the given time. Some flexibility is needed in its application if the person cannot present herself for medical reasons or because of other administrative appointments.

SESSION 04

REPORTING

Importance of having policy guidelines on who to apply it to and to what frequency!

- Reporting once a day should be applied exceptionally in light of the proportionality requirement.
- Special measures should be developed for vulnerable individuals in accordance with their profile.
- Reporting frequency should be modulated in accordance with the compliance of the individuals to the measure.
- Travel costs should be covered if the reporting place far from the place of residence of the individual.

SESSION 04

REPORTING

EXAMPLE OF A PRACTICE: REPORTING GUIDELINES IN THE UK

- Existence of criteria for imposing different frequencies in reporting requirements, including the applicant's criminal record, her administrative status, her vulnerability, the existence of an address and the likelihood of removal.
- Vulnerable individuals are normally be subject to low frequency reporting. Telephone reporting in combination with physical reporting can be considered if the person is ill or pregnant & to avoid unnecessary travel.
- Possibility to vary the frequency or the timing between two reporting events.
- Cost of transportation to the place of reporting are covered by the state.
- If the person is not be able to report for a valid reason (eg. medical reasons), it can be reported.

SESSION 04

REPORTING

**IF YOU HAD TO DESIGN REPORTING
GUIDELINES FOR YOUR COUNTRY
WHAT CATEGORY OF PEOPLE
WOULD YOU PUT UNDER THE
HIGH/MEDIUM/LOW REPORTING
FREQUENCY?**

SESSION 04

SPONSORSHIP PROGRAMS

Placement of the foreigner under the care of a sponsor or a guarantor (either from the outset or as a condition for release from detention).

Depending on the system in place, certain conditions can be required from a sponsor such as:

- He is a national or a resident in the country.
- He has developed or has prior links with the individual (can be a family member, a friend or a detention visitor).
- He has means to support the foreigner.
- He doesn't have criminal records.
- He can provide a financial guarantee/surety which will be forfeited if the person absconds (eg. UK).

SESSION 04

SPONSORSHIP PROGRAMS

- Should not be the only alternative available and the only condition for release from detention.
- Ideally, an organisation should be able to sponsor an applicant so as the measure not to be only available for those with previous social links in the country.
- Systems should prevent the risks of exploitation inherent to the dependency created between the applicant and his “sponsor”
- Enabling those submitted to this ATD to access material support from the state would facilitate its implementation.

SESSION 04

SPONSORSHIP PROGRAMS

WHICH ORGANISATIONS OR PEOPLE
COULD ACT AS GUARANTORS IN THE
COUNTRY?



SESSION 04

FINANCIAL GUARANTEE

Asking the individual to deposit a financial amount which would be forfeited if the person absconds.

- This system should not be discriminatory in its application and benefit only those who can afford it. The sum should be decided in line with the principle of proportionality bearing in mind the means of the applicant.
- This measure needs to be explained clearly to the person as being a deposit which can be recovered.
- The involvement of third independent parties would facilitate the process and better ensure its success.

SESSION 04

FINANCIAL GUARANTEE

**ON WHAT CRITERIA COULD THE
AMOUNT OF THE FINANCIAL
GUARANTEE BE ESTABLISHED IN
YOUR COUNTRY?**



SESSION 04

DESIGNATED RESIDENCE

Designation of a place where the person has to live. What characterizes this scheme is that the person doesn't have the choice to live in another place than the one designated by the State

It could be:

- Private home of the individual
- Private home of guarantor
- State funded accommodation
- State run center: Communal center or individual housing. For asylum seekers placed in an ATD, they are then mainstreamed into the reception system.

SESSION 04

DESIGNATED RESIDENCE

- Should ensure a good access to services and level of material conditions, linked to the centralisation of services and the placement in a state- run structure.
- It is important to create an non carceral environment conducive to building trust with the migrants – notably through links with the local community and with external actors (eg.NGOs, lawyers).
- When in private accomodation, you may need your own ressources or guarantor to be placed into this ATD. However, this should not become a precondition for release and state funding housing should be provided.

SESSION 04

DESIGNATED RESIDENCE



EXAMPLE OF A PRACTICE: RETURN HOUSES IN BELGIUM

- Open individual housing units for families under a detention order (under an asylum procedure at the border, in a return or Dublin procedure)
- Daily presence of a coach (a representative of the Belgian administration) both to address the family's everyday needs and to accompany them in their administrative processes. One of their essential role is to coordinate all actions which are taken around a family, ensure a coherent process and make sure this process is understood by the family members.
- Access to NGOs and lawyers freely
- Good material conditions and full privacy for the families
- Exploration of all avenues for regularisation

SESSION 04

DESIGNATED RESIDENCE

**WHAT DO YOU THINK IS THE
ADDED VALUE OF A COACH IN SUCH
A SET UP?**



SESSION 04

ELECTRONIC TAGGING

In most cases, a receiver is placed in the individual's home and an electronic bracelet is fitted around the individual's ankle to gather information about whether she is in her home at specific times.

- Very coercive measure which should only be used for specific cases and as a last resort.
- Expensive as requires the use of an electronic device.
- Its application needs to be monitored to comply with Human Rights obligations

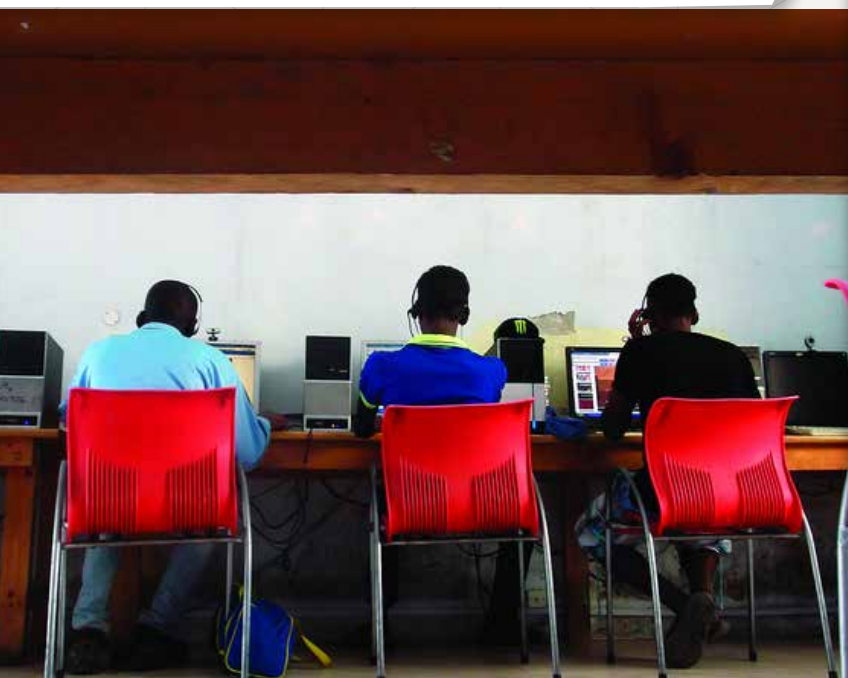
SESSION 04

MAIN POINTS

- A wide range of alternatives must be available to adapt the measure to individual profiles and ensure that they are accessible to all (including those without resources or prior contacts);
- All ATD are not equivalent and the level of coerciveness induced must be taken into account when considering them;
- The environment needs to be adequate and conducive to building trust
- The types of ATD developed in a country will depend largely on the context – especially on existing resources and reception arrangements for AS.
- Those submitted to ATD should have access to services and support, even if they are in the community.
- Research has shown that coaching and individual case management improved the efficiency of alternatives to detention.

SESSION 04

ALTERNATIVES AND ACCESS TO RIGHTS



For asylum seekers, according to the RRCD, Member States shall ensure adequate material support to applicants for international protection.

→ Nothing in the legal provisions of the RRCD hampers asylum seekers under alternative to detention to benefit from the full range of adequate material support provided by the directive.

A few rights contained in the RRCD:

- Provision of **information** about the obligations and benefits linked to their status & about the organisations which provide information and legal assistance.
- Access to **education** for minors
- **Availability of material** reception conditions (which guarantees their subsistence and protects their physical and mental health)
- Provision of the necessary **health care**

SESSION 04

OBSTACLES FOR ASYLUM SEEKERS UNDER ATD?

In practice, we have found that there were difficulties to exercise certain rights linked to:

- The restriction in the **freedom of movement** contained in some ATD (eg. go to school or work if there were daily reporting requirements).
- the fact that they may be **considered differently** than other asylum seekers and therefore not benefit from the same rights.

Furthermore, access to services and material support may be available only for those who are staying in government run-centers

SESSION 04

WHAT SAFEGUARDS MAKE AN ALTERNATIVE TO DETENTION WORK & COMPLIANT WITH LEGAL OBLIGATIONS?


CHECKLIST

- Mechanisms for review and legal remedies (both against an detention and ATD decision)
- Provision of legal assistance and support
- Individual follow up of the case and exploration of all possible outcomes (case management)
- Material support as well as medical and psychological care to enable the person to avoid destitution
- Provision of regular & up to date information in a language they understand on both the asylum procedure and ATD they are subject to
- Access to NGOs, International organisations and Lawyers

SESSION 05

THE NATIONAL CONTEXT

**THIS SESSION IS AIMED AT TRIGGERING
DEBATE AND ENCOURAGE
THE DEVELOPMENT OF ALTERNATIVES
TO DETENTION IN YOUR COUNTRY.**

A close-up photograph of a woman with dark hair, smiling and looking towards the right. Next to her is a young child with curly hair, also looking towards the right. In the background, several flags are visible, including the flag of the Central African Republic. The overall tone is positive and humanistic.

SESSION 05

**NATIONAL POLICY AND
LEGAL FRAMEWORK ON
DETENTION AND ATD**

**SHORT PRESENTATION OF THE
NATIONAL LEGAL FRAMEWORK
ON DETENTION AND
ALTERNATIVES TO DETENTION.**

**FORMS OF ATD IMPLEMENTED IN
PRACTICE (WHERE APPLICABLE)
+ RESPONSIBLE BODIES FOR
IMPLEMENTATION: WHO IS
MAKING THE DECISION?
HOW TO APPEAL?**

SESSION 05

DISCUSS THE FUTURE OF ATD IN YOUR COUNTRY

Why is ATD important in your national context? What do we want to achieve (always think of the purpose of detention and ATD in your context when making proposals)?

What interest would the state have in applying ATD to AS currently detained?

What are the most suitable schemes to be considered given the national context?

What can be done to introduce, expand or improve the implementation of ATD in your country; recognizing the most relevant schemes according to national particularities and available resources.





THANK YOU