



MADE REAL – Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning

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Completed Legal Questionnaire for the project MADE REAL

Slovenia

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- ✚ The aim of this questionnaire is to collect data on the legal framework in your national context with regards to alternatives to detention. It will be completed by the national member of Odysseus network. The references in the questions to the Reception Conditions Directive concern the version of 2003 (Directive 2003/9/EC) unless your Member State has already transposed the recast Reception Conditions Directive (Directive 2013/33/EU)

Definitions¹:

'Applicant': (term used by the directive) or **asylum seeker (A/S)** (term employed by us but which we understand as synonymous): means a third-country national or a stateless person² who has made an application for international protection in respect of which a final decision has not yet been taken;

'Detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

'Final decision': means a decision on whether the third- country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

'Minor': means a third-country national or stateless person below the age of 18 years;

¹ The definitions used are taken by the recast reception conditions directive (Directive 2013/33/EU) and the returns directive (Directive 2008/115/EC). As we know that the first is not yet in force and both of these instruments not applicable in all Member States examined, if national law differs at any point from these definitions please specify it in your answers.

² We are aware of the incompatibility of this definition with the 1951 Refugee Convention but we decided to use the definitions as agreed in the EU legal instruments.

'Third-country national': means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

'Unaccompanied minor' (UAM): means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

'Returnee': Third country national subject to a return decision

Concerning alternatives to detention, regardless of the definition that we will adopt later, this research should cover all schemes that are understood by governments as 'alternatives to detention', even if through our analysis we might conclude that some of them in fact do not satisfy our understanding of what can be considered an 'alternative to detention'.

A. National Legal Framework on detention and alternatives to detention

General

1. Is detention of asylum seekers and returnees regulated by law? (Please comment on the nature and level of the different norms employed for each of the two categories: legislative, regulatory, administrative-like instructions/circulars etc.)

YES	NO	Comment
+		For both asylum seekers and returnees the norms concerning detention are legislative.

2. Please indicate the title, date, number and references of publication into the official gazette (if applicable) of the legal measure(s).
 - a. Send us as an annex an electronic version (or link) to the text of the measure(s) in question

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- b. For MS other than the UK and Belgium: Please provide access to any translation of the above into English, if they are available (even if it concerns unofficial, non-binding translations undertaken by UNHCR etc., this will be used for our comprehension)

Asylum seekers:

Title	International Protection Act - IPA (<i>Zakon o mednarodni zaščiti - ZMZ</i>)
Date	Adopted: 21.11.2007 Published: 5.12.2007 Entered into force: 4.1.2008
Number	2006-1711-0047
Reference of publication in the official journal (if applicable)	Official Gazette No. 111/2007 Subsequent modifications: 111/2008, 30/2009, 58/2009, 37/2010, 99/2010, 26/2011, 98/2011, 83/2012, 47/2013, 111/2013, 114/2013.
Relevant link	http://zakonodaja.gov.si/rpsi/r01/predpis_ZAKO4911.html

Returnees:

Title	Aliens Act - AA (<i>Zakon o tujcih - ZTUJ-2</i>)
Date	Adopted: 15.6.2011 Published: 27.6.2011 Entered into force: 28.7.2011
Number	2010-1711-0004
Reference of publication in the official journal (if applicable)	Official Gazette No. 50/2011

Relevant link	http://zakonodaja.gov.si/rpsi/r01/predpis_ZAKO5761.html
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3. Based on which grounds could an asylum seeker be detained during the asylum procedure? Please comment where necessary.

Question	Answer (yes/no)	Comment
Identity verification, in particular if the persons have no or false documents	Yes.	Asylum seeker's movement may be temporarily restricted, if that is necessary for establishing the identity of the asylum seeker (Article 51, paragraph 1, sub-paragraph 1 of the IPA).
Protection of public order or national security	Yes.	Asylum seeker's movement may be temporarily restricted due to reasonable grounds of endangering of other persons' life or property (Article 51, paragraph 1, sub-paragraph 1 of the IPA). Asylum seeker's movement may also be temporarily restricted if there is suspicion on misleading and abuse of the procedure for reasons stated in sub-paragraphs 4, 5, 6, 7, 8, 9, 10, 12, 14 and 15 of Article 55 of IPA (Article 51, paragraph 1, sub-paragraph 2).

		<p>Article 55 lists the grounds for rejection of applications in accelerated procedure. One of the listed grounds is:</p> <p>The asylum seeker might, by committing a criminal offence, endanger national security or public order of the state and due to these reasons, an enforceable instrument for leaving the state has been served to him/her as a secondary sentence, or that sentence has already been executed, while the time period of the EU entry ban has not yet expired (Article 55, subparagraph 14).</p>
Public health	No.	<p>The 2007 IPA also included 'Prevention of the spread of contagious diseases' as a ground for detention, but the 2010 amendment of the IPA eliminated such ground for detention. The law now does not explicitly list public health concerns as a ground for detention, however there are possibilities for a quarantine under the</p>

		public health care legislation in case of contagious diseases, which has a general application and does not apply only to asylum seekers.-
Risk of absconding	Yes.	<p>Asylum seeker's movement may be temporarily restricted:</p> <ul style="list-style-type: none"> - with the purpose of surrendering the asylum seeker to a safe third country, if there are reasons to believe that he or she will avoid it (Article 51, paragraph 1, subparagraph 4). <p>The risk of absconding is otherwise not specifically listed as a ground for detention, however, according to the International Protection Division of the Ministry of the Interior (<i>Sektor za mednarodno zaščito Ministrstva za notranje zadeve</i>), it is an important circumstance, which is taken into consideration when deciding whether to place a person in detention.</p>
Other (please specify)	Yes - Misleading and abuse of the procedure	Asylum seeker's movement may also be temporarily restricted

		<p>if there is suspicion on misleading and abuse of the procedure for reasons stated in subparagraphs 4, 5, 6, 7, 8, 9, 10, 12, 14 and 15 of Article 55 of IPA (Article 51, paragraph 1, subparagraph 2). These are also the grounds for rejection of application in accelerated procedure.</p> <p>4The applicant presented false grounds, in particular when his statements are inconsistent, contradictory, improbable, insufficient and in contradiction with the information on the country of origin;</p> <p>5The applicant has failed, without reasonable cause, to make his application in the shortest possible time, having had opportunity to do so;</p> <p>6The applicant has submitted the application merely in order to delay or prevent the enforcement of his removal from the country;</p> <p>7The applicant refuses to have his/her fingerprints and</p>
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		<p>photograph taken;</p> <p>8The applicant has grounded his application on false information with respect to his identity or forged documents or has withheld relevant information or documents with respect to his identity or nationality;</p> <p>9The applicant has intentionally destroyed or disposed a travel document, an identity document with a photograph, revealing his identity or nationality or other document containing a photograph that would have helped establish his identity or nationality;</p> <p>10The applicant has intentionally destroyed or disposed other documentation (documents, tickets, certificates etc.) that could bear significance in establishing his identity, nationality or eligibility for obtaining international protection;</p> <p>12The applicant has filed another application for asylum stating different personal data without a justifiable reason;</p>
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	<p>A/S subject to Dublin transfer</p>	<p>14The asylum seeker might, by committing a criminal offence, endanger national security or public order of the state and due to these reasons, an enforceable instrument for leaving the state has been served to him/her as a secondary sentence, or that sentence has already been executed, while the time period of the EU entry ban has not yet expired (this ground is also listed under Protection of public order or national security) ;</p> <p>15The applicant has withheld the fact that he/she already filed an application in another state, particularly in case of him/her stating different personal data</p> <p>Under Article 59(2), until handing over the A/S to the responsible state, place the A/S in detention if:</p> <p>He/she is in possession of a visa or residence permit of another member state, which is considered as a reason for determination of the</p>
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		<p>responsible member state in accordance with Regulation 2003/343/EC; or if there is evidence or indirect circumstances from the Regulation 2003/343/EC, including data from the Chapter III of the Regulation 2725/2000/EC, on the basis of which it can be determined that the applicant has upon his arrival from the third country illegally crossed the border of the member state; or from the day of receiving a positive fingerprint match in the Eurodac database in accordance with the Regulation 2000/2725/EC; or from the day of receiving confirmation on the existence of data from the Visa Information System in accordance with the Regulation 2008/767/EC, which is considered as evidence for determination of the responsible member state in accordance with Regulation 2003/343/EC; or when the decision has been served on him, with</p>
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		which his application has been dismissed and the responsible member state has been determined.
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4. Based on which grounds could a returnee be detained? Please comment where necessary.

Question	Answer (yes/no)	Comment
Identity verification, in particular if the persons have no or false documents	Yes.	Paragraph 2 of Article 76 of AA states that the provision of paragraph 1 of Article 76 shall also be applied in cases where the identity of the alien is not known. (Paragraph 1 of Article 76 states, that for an alien who is at risk of absconding or fails to leave the country by the specified deadline and who, for any reason, cannot be removed immediately, the police shall order restriction of movement)
Protection of public order or national security	No.	
Public health	No.	The law now does not explicitly list public health concerns as a ground for detention, however there are possibilities for a quarantine under the public health care

		legislation in case of contagious diseases, which has a general application and does not apply only to returnees.
Risk of absconding	Yes.	<p>Paragraph 1 of Article 76 of the AA states, that for an alien who is at risk of absconding or fails to leave the country by the specified deadline and who, for any reason, cannot be removed immediately, the police shall order restriction of movement.</p> <p>Article 68 of the AA prescribes a list of circumstances constituting risk of absconding: the alien has illegal resided in the Republic of Slovenia previously; has entered the country despite the entry ban imposed on him/her; a final judgment has been imposed on the alien for a criminal offence; the alien possesses a forged or altered travel or other documents or documents of another person; the alien has provided false information or is</p>

		<p>uncooperative in the procedure; the conduct of the alien suggests that he/she will not depart from the country by the deadline set for voluntary return.</p> <p>In paragraph 2 of Article 68 the AA lists less serious circumstances indicating that an alien is at risk of absconding are as follows: the alien has entered the Republic of Slovenia illegally; the alien has exceeded the period of legal residence in the country by less than 30 days; there is no possibility for the alien to reside in the Republic of Slovenia; other less serious circumstances identified on the basis of individual treatment.</p>
Other (please specify)	N/A	

5. Is detention foreseen for asylum seekers in specific situations under the national legal framework? Are alternatives to detention foreseen in law for asylum seekers under those special circumstances?

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Type of group	Detention foreseen?	Alternatives foreseen?	Comment ³
A/S in border procedures	Yes.	No.	<p>The law does not specify/limit detention/alternatives to certain types of procedures; however, a person is formally not considered an asylum seeker until a complete asylum application is filed – until that moment the provisions of the IPA do not apply to such individual, but detention is foreseen under the State Border Control Act – for the time period which is absolutely necessary, but no longer than 48 hours.</p> <p>If the person expresses the intent to apply for asylum, the police inform the Ministry and the person is transferred to the Asylum Home.</p>
A/S in accelerated procedures	Yes.	Yes.	<p>The IPA does not specify/limit detention/alternatives to certain types of procedures and according to the International Protection Division of</p>

³ Please specify in your comments if alternatives to detention are foreseen only for a specific group, for example unaccompanied minors or families with minor children.

			the Ministry of the Interior (<i>Sektor za mednarodno zaščito Ministrstva za notranje zadeve</i>) both detention and alternatives apply to A/S in this type of procedure.
A/S subject to a Dublin transfer⁴	Yes.	Yes.	Under Article 59(2), until handing over the A/S to the responsible state, place the A/S in detention if: He/she is in possession of a visa or residence permit of another member state, which is considered as a reason for determination of the responsible member state in accordance with Regulation 2003/343/EC; or if there is evidence or indirect circumstances from the Regulation 2003/343/EC, including data from the Chapter III of the Regulation 2725/2000/EC, on the basis of which it can be determined that the applicant has upon his arrival from the third country

⁴ Please specify in your comments whether the law allows for detention during a preliminary stage in order to examine whether the provisions of the Dublin regulation are applicable or in order to carry out the transfer or both? Please also comment whether the law requires a significant risk of absconding in order to justify the measure of detention in that case.

			illegally crossed the border of the member state; or from the day of receiving a positive fingerprint match in the Eurodac database in accordance with the Regulation 2000/2725/EC; or from the day of receiving confirmation on the existence of data from the Visa Information System in accordance with the Regulation 2008/767/EC, which is considered as evidence for determination of the responsible member state in accordance with Regulation 2003/343/EC; or when the decision has been served on him, with which his application has been dismissed and the responsible member state has been determined.
Other	N/A		

Vulnerable applicants

6. Is there a mechanism/process in place to identify vulnerable applicants foreseen in the law?

7. Does the system allow for identification of vulnerabilities also at a later stage in the procedure?

Article 15 of the IPA states that special needs and vulnerability of asylum seekers are identified based on individual evaluation of the needs of each asylum seeker, refugee or a person with the status of subsidiary protection. In accordance with the law, vulnerable persons with special needs, particularly minors, unaccompanied minors, disabled persons, elderly persons, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with mental health disorders and victims of rape, torture or other serious forms of psychological, psychical or sexual violence shall be entitled to special care and treatment. At accommodation of vulnerable persons with special needs (A/S as well as refugees and persons with the status of subsidiary protection) their specific situation is taken into consideration and the conditions of reception, health and psychological counseling and care are adjusted to their needs. The law does not specify the process for identifying vulnerable applicants; it merely states that it is done on the basis of individual assessment of each applicant.

The IPA does not explicitly specify a stage of the procedure in which identification of vulnerability is possible and it therefore does not limit identification of vulnerabilities to a certain stage of the procedure. According to the International Protection Division of the Ministry of the Interior (*Sektor za mednarodno zaščito Ministrstva za notranje zadeve*) the question of possible vulnerability is usually addressed at the very reception of the applicant at the Asylum home – when he or she is accommodated in the pre-reception area of the Asylum home and checked by the medical staff; and also later on, when application is taken by the public official or during the personal interview.

Concerning returnees, the AA does not prescribe any mechanism for identifying vulnerable groups of returnees. The AA merely stipulates that detention of women, families, children, unaccompanied minors, elderly persons, severely ill persons and other vulnerable persons is carried out separately with the purpose of ensuring appropriate privacy.

8. Are specific categories of asylum seekers generally exempt from detention as a principle according to the legal framework? If so which? Please comment where necessary.

Categories	Exemption (yes/no)	Comment
Unaccompanied Minors	No.	The IPA does not

		<p>provide for an exemption concerning any group of asylum seekers – in general, if grounds for detention exist, any asylum seeker can be subjected to detention, regardless of his/her vulnerability. However, Paragraph 3 of Article 51 of the IPA states that unaccompanied minors can only be detained in the area of Asylum home or its branch and therefore cannot be detained in the Aliens centre (which authorities consider an alternative to detention). In such case, they are accommodated at the AH in the same way as A/S that are not detained and in the Asylum Home enjoy the same rights as A/S that are not detained with the exemption of leaving the premises of the Asylum Home – e.g. to go to the city centre.</p> <p>According to the International Protection Division of the Ministry of the Interior there is an informal policy of the Ministry that vulnerable groups of asylum seekers are never detained – not even in the area of Asylum home. However, that is an informal policy that can change at any moment, as there are no exemptions prescribed</p>
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		by the law.
Families with minor children	No.	The IPA does not provide for an exemption concerning any group of asylum seekers - in general, if grounds for detention exist, any asylum seeker can be subjected to detention, regardless of his/her vulnerability. According to the International Protection Division of the Ministry of the Interior there is an informal policy of the Ministry that vulnerable groups of asylum seekers are never detained - not even in the area of Asylum home. However, that is an informal policy that can change at any moment, as there are no exemptions prescribed by the law.
Single mothers	No.	Please, see above.
Vulnerable individuals	No.	Please, see above.
Other	No.	Please, see above.

9. Are specific categories of returnees generally exempt from detention as a principle according to the legal framework? If so which? Please comment where necessary.

Categories	Exemption (yes/no)	Comment
Unaccompanied Minors	No.	Paragraph 3 of Article 82 of the AA stipulates that an unaccompanied

		<p>minor, in agreement with a guardian for special case (who is assigned to the minor by a social work centre), shall be accommodated at adequate facilities for minors. If this is not possible (which, in practice, is the case), the unaccompanied minor shall be accommodated at the Aliens Centre. Concerning detention at the Centre, Paragraph 3 of Article 76 of the AA merely stipulates that detention of women, families, children, unaccompanied minors, elderly persons, severely ill persons and other vulnerable persons is carried out separately with the purpose of ensuring appropriate privacy.</p> <p>Although the law speaks of accommodation, the regime in place at the Centre shows that this is in fact detention.</p>
<p>Families with minor children</p>	<p>No.</p>	<p>Paragraph 3 of Article 82 of the AA stipulates that families with minor children shall be accommodated at adequate facilities for minors. If this is not possible (which, in practice, is the case), the</p>

		<p>family shall be accommodated at the Aliens Centre. Concerning detention at the Centre, Paragraph 3 of Article 76 of the AA merely stipulates that detention of women, families, children, unaccompanied minors, elderly persons, severely ill persons and other vulnerable persons is carried out separately with the purpose of ensuring appropriate privacy.</p>
Single mothers	No.	<p>Under the provision concerning families with minor children (see above) single mothers can also be accommodated at adequate facilities for minors. If this is not possible (which, in practice, is the case), the family shall be accommodated at the Aliens Centre. Concerning detention at the Centre, Paragraph 3 of Article 76 of the AA merely stipulates that detention of women, families, children, unaccompanied minors, elderly persons, severely ill persons and other vulnerable persons is carried out separately with the purpose of</p>

		ensuring appropriate privacy.
Vulnerable individuals	No.	Paragraph 3 of Article 76 of the AA merely stipulates that detention of women, families, children, unaccompanied minors, elderly persons, severely ill persons and other vulnerable persons is carried out separately with the purpose of ensuring appropriate privacy.
Other	No.	Paragraph 3 of Article 76 of the AA merely stipulates that detention of women, families, children, unaccompanied minors, elderly persons, severely ill persons and other vulnerable persons is carried out separately with the purpose of ensuring appropriate privacy.

10. Are there any special provisions in place regarding the detention of specific groups of asylum seekers? Please elaborate on the content of such provisions as well as specify which particular group of asylum seekers they concern.

Special provisions	Type of group	Comment
Time limits to detention	N/A	Paragraph 4 of Article 51 of the IPA only stipulates general rules concerning time limits to detention (detention may stay

		in effect until the grounds for detention exist, but not longer than three months; if after three months grounds for detention still exist, detention may be extended for a further period of one month), no special provisions concerning specific groups of asylum seekers are in place.
Detention only permitted in exceptional circumstances	N/A	Article 51 of the IPA only prescribes general rules (grounds for detention), no exceptional circumstances are prescribed for specific group of asylum seekers (Please, see point 3 of this questionnaire).
Other	N/A	

11. Are there any special provisions in place regarding the detention of specific groups of returnees? Please elaborate on the content of such provisions as well as specify which particular group of asylum seekers they concern.

Special provisions	Type of group	Comment
Time limits to detention	N/A	Paragraph 4 of Article 76 of the AA only stipulates

		general rules concerning time limits to detention (restriction of movement may last only for the period, necessary to deport the alien from the country, but no longer than six months), no special provisions concerning specific groups of returnees are in place.
Detention only permitted in exceptional circumstances	N/A	Article 76 of the AA only prescribes general rules (grounds for detention), no exceptional circumstances are prescribed for specific group of returnees (Please, see point 4 of this questionnaire).
Other	N/A	

Necessity and Proportionality Test and Individual Examination

12. Is there an explicit obligation to detain asylum seekers only:

Question	Answer	Comment
If a particular ground for detention exists?	Yes.	Paragraph 1 of Article 51 of the IPA stipulates the (exhaustive) list of

		grounds for detention.
After an individualized examination?	Yes.	The exact wording of the provision of Paragraph 1 of Article 51 of the IPA is: "If necessary, the applicant's movement MAY temporarily be restricted, due to...", followed by the list of grounds for detention. This wording leaves room for individual examination in each case (discretionary power of the responsible authority), which was also confirmed in the interview with the representatives of the International Protection Division of the Ministry of the Interior - in order to place an A/S in detention, first one of the grounds listed in the IPA must exist, followed by individual examination (risk assessment).
As a last resort if other less coercive measures are not applicable?	Yes.	The exact wording of the provision of Paragraph 1 of Article 51 of the IPA is: "If necessary, the applicant's movement MAY temporarily be restricted, due to...", followed by the list of grounds for detention.



		<p>Paragraph 2 of Article 51 of the IPA prescribes two possibilities for restriction of movement⁵: to the area of the Asylum Home /its branch or to a specifically designated facility of the Asylum Home/other appropriate facility of the Ministry (Aliens centre). Although the IPA refers to both cases in terms of restriction of movement (detention) and does not distinct, in terms of more or less coercive measures, between the two measures, neither does it provide for any criteria/conditions under which the A/S are to be placed in one or the other, the Ministry of Interior considers the possibility of detaining A/S to the area of the Asylum Home an alternative to detention - as the regime and the rules of accommodation at the Aliens Centre is much more strict than the regime at the Asylum Home. As described above, after one of the</p>
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⁵ The IPA uses the term 'restriction of movement', however the implementation of the measure in practice would amount to deprivation of liberty, as the person would not be allowed to leave the premises of the centre.

		grounds for detention (Art 51 IPA) was established and individual examination has been made, a decision follows whether to place the A/S in detention in the Asylum home or Aliens centre.
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13. Is there an explicit obligation to detain returnees only:

Question	Answer	Comment
If a particular ground for detention exists?	Yes.	Article 76 of the AA stipulates that to an alien who is at risk of absconding or fails to leave the country by the deadline specified and who for any reason cannot be removed immediately the police shall order restriction of movement, accommodating the alien at the Aliens Centre or outside the centre; this provision is also applied in cases where the identity of the alien is not known.
After an individualized examination?	No.	Article 76(1) of the AA does not give the police the discretionary power when deciding upon restriction of movement, meaning that detention is ordered in each case where the legal requirements for

		<p>detention are established (the exact wording is 'the police SHALL order...' and not 'the police may order...'). The basic condition for detention in the Aliens Centre is that the alien is undergoing the procedure of deportation and there is a risk of absconding/ the alien fails to depart from the country by the deadline specified / the identity of the alien is not known.</p> <p>Article 68 of the AA prescribes a list of circumstances constituting risk of absconding: the alien has illegal resided in the Republic of Slovenia previously; has entered the country despite the entry ban imposed on him/her; a final judgment has been imposed on the alien for a criminal offence; the alien possesses a forged or altered travel or other documents or documents of another person; the alien has provided false information or is uncooperative in the procedure; the conduct of the alien suggests that he/she will not depart from the country by the deadline set for voluntary return. Less serious circumstances indicating that an alien is at risk of absconding</p>
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		are as follows: the alien has entered the Republic of Slovenia illegally; the alien has exceeded the period of legal residence in the country by less than 30 days; there is no possibility for the alien to reside in the Republic of Slovenia; other less serious circumstances identified on the basis of individual treatment.
As a last resort if other less coercive measures are not applicable?	Yes.	Article 76 of the AA stipulates that the police shall order restriction of movement, accommodating the alien at the Aliens Centre or outside the centre, giving the police the possibility to replace the measure of obligatory accommodation at the Aliens Centre with more lenient measures (Article 81 of the AA) or grant permission to stay (Article 73 of the AA).

14. Does the national legal framework take into account the principles of necessity and proportionality, and if so, how?

15. Is there an obligation established in law to inform detained asylum seekers and/or returnees about the existence of alternatives to detention? What are the possible consequences if they are not informed?

Under Slovenian Constitution, strict proportionality test applies in cases of interference with human rights such as deprivation of liberty, which is also confirmed by the case-law of the Constitutional Court of the Republic of Slovenia. The proportionality test is taken into account in the relevant pieces of

legislation – the IPA and AA. The IPA sets the list of grounds for detention, however, it does not instruct mandatory detention in case these grounds exist. The authorities have the possibility to use their discretionary power to explore whether such measure is necessary or proportional. Although the AA stipulates detention when prescribed grounds exist, it also provides the provisions on more lenient measures: “The police may, *ex officio* or at the request of an alien, replace the measure of obligatory accommodation at the Centre with more lenient measures provided that these measures also enable deportation of the alien from the country”. The police should therefore assess, whether detention is necessary or the aim of detention – securing deportation from the state – could also be achieved with less invasive measures. However, according to the interview with the administrative court judge, application in practice is often problematic.

Under Article 9 of the of the IPA, asylum seekers receive a brochure with information on the international protection procedure, rights and duties of the A/S, possible consequences of non-compliance with obligations and non-cooperation with competent authorities and deadlines for legal remedies, the list of refugee counsels and information on NGOs active in the field of international protection. The law does not stipulate specifically the obligation to inform the A/S on the existence of alternatives to detention and therefore also no consequences if A/S are not informed. But A/S do have regular access to legal aid, which is not the case for returnees. For returnees the AA does not stipulate any obligation of the authorities to provide information on alternatives to detention. According to the Aliens Centre there are some informational brochures available to returnees, however it is not clear whether they include information on alternatives.

Alternatives in national law

16. Alternatives to detention for asylum seekers:

- a) Is there an explicit obligation to establish alternatives to detention under the national legal framework?
- b) Are some examples of alternatives to detention already laid down in national legislation and if so, which?
- c) Is it an exhaustive or an indicative list?

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[Please do not describe here the legal framework on the functioning of alternatives to detention; a detailed section will follow. Please comment where necessary.]

Question	Answer	Comment
Explicit obligation?	No.	
Alternatives already laid down?	Yes.	Paragraph 2 of Article 51 of the IPA prescribes two possibilities for restriction of movement: to the area of the Asylum Home /its branch or to a specifically designated facility of the Asylum Home/ other appropriate facility of the Ministry (Aliens centre). Although the IPA refers to both cases in terms of restriction of movement (detention) and does not distinct, in terms of more or less coercive measures, between the two measures, neither does it provide for any criteria/conditions under which the A/S are to be placed in one or the other, the Ministry of Interior considers the possibility of detaining A/S to the area of the Asylum Home an alternative to detention - as the regime and the rules of accommodation at the

		Aliens Centre is much more strict than the regime at the Asylum Home.
If yes, which alternatives are mentioned?	Yes.	Restriction of movement to the area of the Asylum Home /its branch.
Is it an indicative or exhaustive list?	Exhaustive.	

17. Alternatives to detention for returnees:

- d) Is there an explicit obligation to establish alternatives to detention under the national legal framework?
- e) Are some examples of alternatives to detention already laid down in national legislation and if so, which?
- f) Is it an exhaustive or an indicative list?

[Please do not describe here the legal framework on the functioning of alternatives to detention; a detailed section will follow. Please comment where necessary.]

Question	Answer	Comment
Explicit obligation?	No.	
Alternatives already laid down?	Yes.	Article 81 of the AA: more lenient measures. Paragraph 3 of Article 82 of the AA: accommodation at adequate facilities for minors - applicable to unaccompanied minors and families with minor children.

If yes, which alternatives are mentioned?		Allowing the person to reside outside the Aliens Center, determination of a place of residence, restriction of movement to the place of residence, obligation to report to the nearest police station, accommodation at adequate facilities for minors – applicable to unaccompanied minors and families with minor children.
Is it an indicative or exhaustive list?	Indicative.	

18. Are alternatives to detention foreseen for specific groups of returnees?

Group	Answer	Comment
Unaccompanied minors?	Yes.	<p>Paragraph 3 of Article 82 of the AA stipulates that an unaccompanied minor, in agreement with a guardian for special case (who is assigned to the minor by a social work centre), shall be accommodated at adequate facilities for minors.</p> <p>However, The law does not provide any information on the organisation and the regime in such facilities. As there is no information on the</p>

		<p>application of this measure in practice, it is difficult to assess whether this is truly an alternative to detention or it would constitute the same level of deprivation of liberty as accommodation at the Aliens Centre.</p> <p>Other listed alternatives are not limited to specific groups of returnees.</p>
Vulnerable A/S other than UAMs?	Yes.	<p>Paragraph 3 of Article 82 of the AA stipulates that families with minor children shall be accommodated at adequate facilities for minors.</p> <p>However, The law does not provide any information on the organisation and the regime in such facilities. As there is no information on the application of this measure in practice, it is difficult to assess whether this is truly an alternative to detention or it would constitute the same level of deprivation of liberty as accommodation at the Aliens Centre.</p> <p>Other listed alternatives are not limited to specific groups of returnees.</p>

Other?		Other alternatives are not limited to specific groups of returnees.
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19. Legislative amendments/developments:

- a) Have any changes already been made to the national legal framework concerning alternatives to detention for asylum seekers and/or returnees?
- b) Were they made in view of the transposition of Directive 2013/33/EU? [Question not relevant for the UK]
- c) If not, are you aware of any legislative proposals that are pending, either in view of the transposition of the recast Directive or independently of the transposition, and could you briefly comment as regards their content as they relate to alternatives to detention?

In December 2013 the latest Act Amending the International Protection Act was adopted. However, the amendments did not concern detention of asylum seekers or alternatives to detention. Neither were the changes made in the view of the transposition of the Directive 2013/33/EU. Ever since the adoption, the IPA provides for two possibilities for restriction of movement: to the area of the Asylum Home/its branch or to a specifically designated facility of the Asylum Home/other appropriate facility of the Ministry (Aliens Centre), as described above. With the 2010 amendment detention of the unaccompanied minor asylum seekers in the Aliens Centre was no longer allowed as Article 51(3) stipulated that they can only be detained to the area of Asylum Home or its branch.

Currently there is the Draft Act Amending the Aliens Act pending the legislative procedure in the National Assembly, which is relevant only for returnees. However, it will not, if adopted in the proposed form, bring new alternatives to detention. They will, however, introduce the obligation of the Ministry of Interior to review the placement in detention before the lapse of the 3-month period, for which returnees can be placed in detention.

B. National Legal Framework on the functioning of existing alternatives to detention

General

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20. What types of alternatives to detention are implemented in your Member State? Which categories of third country nationals do they concern? (i.e. asylum seekers, UAMs, returnees etc.)

Types of alternatives	Implementation in practice? (without description)	Group concerned
Obligation to surrender passport and documents	No.	
Regular reporting to the authorities	Yes.	Returnees.
Deposit of adequate financial guarantee	No.	No.
Community release/supervision	No.	
Designated residence	Yes.	Returnees.
Electronic monitoring	No.	N/A
Other (please specify)		
Other (please specify)	Deprivation of liberty at the area of the Asylum Home	Asylum seekers, UAMs.

21. How is the functioning of (the) existing particular scheme(s) of alternatives to detention regulated? (Please comment on the nature and level of the different norms employed: legislative, regulatory, administrative-like instructions/circulars etc.)

For both asylum seekers and returnees the norms concerning detention are legislative – prescribed by the International Protection Act (asylum seekers) and the Aliens Act (returnees).

22. Please indicate the title, date, number and references of publication into the official gazette (if applicable) of the legal measure(s).

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- Send us as an annex an electronic version (or link) to the text of the measure(s) in question
- For MS other than the UK and Belgium: Please provide access to any translation of the above into English, if they are available (even if it concerns unofficial, non-binding translations undertaken by UNHCR etc., this will be used for our comprehension)

Title	International Protection Act - IPA (<i>Zakon o mednarodni zaščiti - ZMZ</i>)
Date	Adopted: 21.11.2007 Published: 5.12.2007 Entered into force: 4.1.2008
Number	2006-1711-0047
Reference of publication in the official journal (if applicable)	Official Gazette No. 111/2007 Subsequent modifications: 111/2008, 30/2009, 58/2009, 37/2010, 99/2010, 26/2011, 98/2011, 83/2012, 47/2013, 111/2013, 114/2013.
Relevant link	http://zakonodaja.gov.si/rpsi/r01/predpis_ZAKO4911.html

Title	Aliens Act - AA (<i>Zakon o tujcih - ZTUJ-2</i>)
Date	Adopted: 15.6.2011 Published: 27.6.2011 Entered into force: 28.7.2011
Number	2010-1711-0004
Reference of publication in the official journal (if applicable)	Official Gazette No. 50/2011

applicable)	
Relevant link	http://zakonodaja.gov.si/rpsi/r01/predpis_ZAKO5761.html

Analysis of each alternative to detention

23. Please provide the following information, as it is stated in the law/implementing circulars etc., for **each of the alternatives to detention** that is implemented:

- a) Summarize the basic characteristics/nature of the scheme as they are described in law/circulars etc. (namely does it consist of reporting obligations, financial guarantee etc.)
- b) Which is the institution in charge of deciding which individuals should be submitted to these alternatives?
- c) Can it act ex officio or only after the application of the concerned individual?
- d) Which organization/entity/actor is responsible for implementing/running this scheme?
- e) If it is a governmental actor do they work in collaboration with other actors? If so who (civil society, local authorities, institutions etc.) and how?
- f) If different, which organisations/institutions are in charge of supervising the implementation of these mechanisms?
- g) Is the alternative to detention of general application or does it relate only to certain categories of returnees (such as families with children, unaccompanied minors etc.)?
- h) What are the obligations that returnees must comply with in the framework of the alternative to detention?
- i) Could returnees be placed in detention if they do not comply with certain obligations stipulated? If yes, please provide a short description of these obligations and explanation on the procedure.

Restriction of movement to the area of the Asylum Home (Paragraph 2 of Article 51 of the IPA) - Asylum seekers

Paragraph 2 of Article 51 of the IPA prescribes two possibilities for restriction of movement: to the area of the Asylum Home /its branch or to a specifically designated facility of the Asylum Home/other appropriate facility of the Ministry (Aliens centre). Although the IPA refers to both cases in terms of restriction of movement (detention) and does not distinct, in terms of more or less coercive measures, between the two measures, neither does it provide for any criteria/conditions under which the A/S are to be placed in one or the other, the Ministry of Interior considers the possibility of detaining A/S to the area of the Asylum Home an alternative to detention.

The asylum seeker detained to the area of the Asylum Home would have access to all of the rights asylum seekers that are not placed in detention have, with the exception of the right to leave the premises of the Asylum Home – e.g. to go to the city centre. The detained A/S would have the right to move freely within the premises of the Asylum Home and would have access to all the services provided at the Asylum Home, including health and psycho-social care, language courses and other activities, provided by the NGOs and also daily access to legal aid as the NGO providing legal aid has a small office at the Asylum Home and is present at there every day. Therefore the only obligation of the asylum seeker under this alternative is to comply with this restriction. In case the A/S violates the terms of this measure, the ministry reviews the case and, if necessary, imposes a stricter measure – accommodation at the Aliens Centre, where the above described benefits are not available. However, if the A/S leaves the Asylum Home and does not return within three days, his/her asylum application shall be considered withdrawn and the asylum procedure shall be terminated, which is a rule that applies also to A/S that are not detained, as they are required to return to the Asylum Home each day before 11pm (longer stays require special permission).

As in the case of detaining the asylum seeker to the Aliens Centre, the decision to be detained to the area of the Asylum Home is made by the International Protection Division of the Ministry of the Interior, who also implements/runs the scheme. The law does not provide for the possibility of the A/S to apply for this alternative measure, as the decision to detain the A/S to the Asylum Home is part of the decision process on detention as such.

The law does not limit this alternative to specific groups of A/S - all groups may benefit from it.

More lenient measures (Article 81 of the AA) - Returnees

The police may, *ex officio* or at the request of an alien, replace the measure of obligatory accommodation at the Centre with more lenient measures provided that these measures also enable deportation of the alien from the country. The police may

decide on the alternative on the ground, without prior accommodation (detention) at the Aliens Centre or the decision can be made by an inspector of the Aliens Centre, which is a police institution.

On this basis the police may issue a decision allowing an alien to reside outside the Centre, in which case the police may determine a place of his/her residence (In practice it is not used in terms of restriction only to the place of residence/ home curfew, but merely a determination of address). In this case the police also have the possibility of restricting the movement of an alien to the said place of residence, and impose the obligation to report regularly to the nearest police station.

The law does not limit this alternative to specific groups of returnees - all groups may benefit from it.

The obligations of returnees under this alternative to detention depend on the set of measures chosen by the police - most often that presents determining a place of residence in combination with the obligation to report regularly to the nearest police station.

The law does not specifically prescribe the consequences in case of a breach of obligations and the police examine the circumstances of each case. If necessary, stricter measures are imposed.

Permission to stay (Article 73 of the AA) - Returnees

Permission to stay can be considered as a special status (for example, when issued to victims of trafficking and illegal employment as a reflection period in order to decide whether he/she shall participate as a witness in criminal proceedings) or as an alternative to detention, as it is considered by the authorities.

Namely, Article 73 of the AA stipulates that permission to stay is granted to an alien, who is to be deported, to temporarily remain in the country. The law stipulates the exhaustive list of grounds for issuing the permission to stay: the deportation of the alien is prohibited under the principle of non-refoulement; if the alien does not possess and is unable to acquire a valid travel document of the country of his nationality; if a physician advises against immediate deportation due to the health condition of the alien; if an alien minor attends primary school in the Republic of Slovenia - permission shall be granted till the end of the school year; if the country of the alien's nationality or, for stateless persons, of last habitual residence, refuses to admit the alien; if deportation is not possible because the transportation of the alien from the country by land, air or water cannot be provided; if deportation is not possible because of circumstances preventing return, such as natural or other disasters, occurred in the country of the alien's nationality or in the country where the alien last resided as a stateless person; if it is required by a guardian for special case assigned to an unaccompanied alien minor.

As in the case of more lenient measures, the police are the authority responsible for granting the permission to stay. The permission is granted *ex-officio* and also at the request of the alien for a period of six months.

The permission may be renewed at the alien's request or *ex officio* for as long as the described conditions exist. Permission to stay does not cancel or in any way change the alien's obligation to depart from the country. In practice this kind of status can be in place for years, leaving the person in a situation with few rights and no possibility to regulate their status and eventually progress to a more permanent legal status in the country. This was severely criticized by CSOs, which led to an amendment of the AA in 2011 – an alien to whom, due to prohibition of deportation under the principle of non-refoulement, a permission to stay has been issued for a period of at least 24 month (prolongations that amounted to at least 24 months), can be issued a temporary residence permit for the period of two years. However, if the permission to stay was issued on other grounds (which is more common in practice), such status regularization is not possible.

An alien is issued a personal card by the police, evidencing that the alien has permission to stay in Slovenia. In the decision permitting an alien to stay, the police may determine the alien's place of residence at a specific address.

If there are reasons to suspect that the alien would attempt to avoid deportation, certain obligations such as regular reporting to the nearest police station, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed on him/her. If the alien does not comply with these obligations, the permission to stay can under Article 74 be terminated (which can be followed by deprivation of liberty in the Aliens Centre); however, the police examine the circumstances of each case.

The law does not limit this alternative to specific groups of returnees - all groups may benefit from it.

Access to rights and compatibility with human rights law

24. What rights have returnees who are subject to an alternative to detention access to? Please focus namely on the following rights:
- a) to healthcare;
 - b) to education;
 - c) access to the labor market;
 - d) to accommodation and in general assistance provided in kind or to financial assistance
 - e) to social and psychological assistance

If not please describe the gaps.

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Returnees:

Right	Yes/No	Comment on the gaps
Healthcare	Yes.	Returnees only have the right to emergency health insurance pursuant to the Act governing healthcare and health insurance.
Education	Yes.	But only for minor schoolchildren, who have the right to attend elementary school.
Access to the labor market	No.	This is one of the main gaps of the alternative schemes, particularly in relation to permission to stay – if grounds exist, it can be perpetuated indefinitely but does not allow the person to work, integrate into society and to regulate their status in the country on the basis of work (that is only possible if the permission to stay is issued because deportation of the alien is prohibited under the principle of non-refoulement – in that case, after 24 months of tolerated stay the person may acquire temporary residence permit with the validity of 2 years).
In kind/financial assistance	Yes – not in all cases.	Returnees detained in the Aliens Centre are entitled to basic care, which is in kind provided by the Aliens Centre. For persons with permission to stay, basic care is provided through financial assistance granted in the amount and manner specified for financial social

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		assistance by the Act governing social support allowances (260 EUR/month). Resources for the payment of the financial assistance are provided by the Centre. But for the returnees who are granted more lenient measures under Article 81 AA, the law does not stipulate any financial support. Since they are not accommodated in the Centre, they cannot receive basic care in the centre, meaning that they need to have support from somebody who will provide him/her with accommodation, food and supplies.
Social/psychological assistance	Yes.	Social and psychological assistance is only provided through the services of the Aliens Centre.

Asylum seekers:

Right	Yes/No	Comment on the gaps
Healthcare	Yes.	Under Article 78 IPA the A/S have the right to emergency health care. Article 84 of the IPA further explains types of treatment the term 'emergency healthcare involves: right to emergency health care and emergency rescue transport under a decision by a doctor and the right to emergency dental healthcare; emergency treatment under a decision by the treating doctor; health care for women

		<p>which includes contraception, abortion and health care of pregnant women and women during delivery.</p> <p>Emergency treatment includes: maintaining the functioning of vital functions, stopping severe bleedings and prevention of haemorrhage, prevention of further deterioration of health condition, which could cause long-term damage on individual organs or vital functions, treatment of shock, health services for chronic diseases and conditions, which, if abandoned would cause disability, other permanent health impairments or death, treatment of fever conditions and prevention of spreading of infections, which might lead to septic condition, treatment or prevention of poisoning, treatment of broken bones and strains and other traumas, where medical intervention is necessary, medications necessary for the treatment of said conditions.</p> <p>Vulnerable persons with special needs and other A/S in exceptional cases have the right to access</p>
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		<p>additional health services, including psycho-therapeutical care, which are determined and approved by a special commission.</p> <p>Minor asylum seekers are entitled to health care services under the same conditions as citizens of Slovenia.</p>
Education	Yes.	<p>Art. 86 of the IPA stipulates access to elementary education (minor A/S) all kind of educational.</p> <p>All asylum seekers have the possibility while minor asylum seekers have the right to access education in vocational and secondary schools under the same conditions as citizens of Slovenia.</p> <p>Asylum seekers are also entitled to access higher and university education under the same conditions as Slovenian citizens.</p> <p>The burden of proof concerning the level of education obtained in the country of origin is on the asylum seeker.</p>
Access to the labor market	No – <i>de facto</i> .	<p>Asylum seekers whose identity has been fully established and who have not been issued a first instance decision for nine months (if the delay in asylum procedure was not caused by them) have the right to acquire a work</p>



		<p>permit with a validity of three months. (Article 85 of the IPA)</p> <p>However, the alternative measure can apply for maximum 4 months (3 + 1) asylum seekers in fact do not have the right to work (usually detention is enforced at the beginning of the asylum procedure).</p>
In kind/financial assistance	Yes.	<p>Under Article 79 of the IPA A/S have the right to basic care, which includes accommodation, nutrition, clothes, shoes and hygienic necessities.</p> <p>Under Article 79.a of the IPA A/S, under the condition that they do not have own financial means, have the right to a monthly allowance.</p>
Social/psychological assistance	Yes.	<p>Under Article 78 of the IPA A/S have the right to humanitarian aid. Art. 87 further stipulates that humanitarian help, which is mostly provided by non-governmental, inter-governmental and governmental organisations and includes material, cultural and psychosocial help, organisation of day-care for children, education of children, youth and adults and other forms of help.</p>

25. Is there an obligation to provide returnees with information about the procedure with regards to the alternatives to detention they are subject to? Is

there an obligation to inform them about the legal remedies to object the imposition of an alternative to detention?

Both asylum seekers and returnees are informed orally (in a language he or she understands) about reasons why they were submitted to these alternatives immediately after decision on alternative to detention is ordered. Within 48 hours they also need to receive a written decision, together with the information on the legal remedy. However, in case of returnees, the fact that they do not have access to legal aid is a considerable obstacle to access to justice.

26. According to your evaluation as legal experts, does each national legal scheme, as it is established under national law, respect the obligations of your Member State under international and European human rights law (in particular the prohibition of inhuman, degrading treatment and arbitrary deprivation of liberty)? Please use references to case-law where available (national jurisprudence and/or case-law from the Human Rights Committee/ECHR) in order to support your opinion.

Although the law in the opinion of authorities does provide an alternative to detention for asylum seekers and the level of rights accessible to asylum seekers is quite high, in fact there is no scheme in place that would enable alternative to deprivation of liberty, as asylum seekers' movement is still restricted to the area of the Asylum Home.

In case of returnees the possibility of more lenient measures is a positive element; however the rights enjoyed by the returnees included in the scheme do raise a few concerns. In addition to the fact that they do not have the access to labour market, the returnees subjected to more lenient measures do not have access to financial assistance and also not to assistance in kind. Therefore the alternative to detention is *de facto* available only to overstayers, returnees who have some kind of social network established but not to other aliens – although the alternative would enable the pursuit of the legitimate aim also in their case. As alternatives are not accessible to them, they are restricted to the premises of the Aliens Centre, which is by many of returnees described as 'worse than prison'. While in the Asylum Home the personnel are civilians and there are only a few security guards present, in the Aliens Centre the returnees are supervised by the police. In Asylum Home NGOs are implementing many social and cultural activities and language classes; legal counsels are present every day and many people from the outside have access, while activities in the Aliens Centre are organized solely by the social workers and NGOs do not have access to the Aliens Centre, legal aid is not accessible. In Asylum Home asylum seekers are free to wear their own

clothes, while in the Aliens Centre they wear uniform clothes provided by the Centre. NGOs that have access to asylum seekers detained at the Aliens Centre report of severe psychological stress of the detainees. Such environment is particularly inadequate for minors and families.

C. Relevant legal remedies and national jurisprudence relating to alternatives to detention

Please provide us with the following information, as it is stated in the law/implementing circulars etc., **for each of the alternatives to detention** that is implemented:

Remedies/procedures

27. Remedies or procedures to object detention:

- a) Is there a specific procedure under national law allowing returnees to appeal the fact that they are subject to detention or to challenge the detention conditions?
- b) Please specify for each if it is a judicial or an administrative procedure.
- c) Is there a right to (free) legal assistance and representation in the framework of this procedure?

28. Remedies or procedures to object placement in detention instead of the imposition of an alternative to detention:

- a) Is there a specific procedure under national law allowing returnees to object their detention on the basis that they should fall instead under the application of an alternative scheme?
- b) Please specify if it is a judicial or an administrative procedure.
- c) Is there a right to (free) legal assistance and representation in the framework of this procedure?

29. Review of the imposition of detention:

- a) Is there a periodic and individual review of the placement in detention?
- a) Is this review made by a judge or a non-judicial independent body?

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- b) At this stage can the judge or non-judicial body examine whether they should fall instead under the application of an alternative scheme?

30. Remedies or procedures to object the imposition of an alternative to detention:

- a) Is there a specific procedure under national law allowing returnees to object the fact that they are subject to an alternative to detention scheme?
- b) Is there a specific procedure under national law allowing returnees to challenge the conditions/compatibility of such schemes with fundamental rights?
- c) Please specify for each if it is a judicial or an administrative procedure.
- d) Is there a right to (free) legal assistance and representation in the framework of this procedure?

31. Review of the imposition of an alternative to detention:

- b) Is there a periodic and individual review of the placement under such an alternative to detention?
- c) Is this review made by a judge or a non-judicial independent body?

Asylum seekers

Under Paragraph 5 of Article 51 of the IPA, asylum seeker has the right to appeal against the detention order within three days after the written detention order has been served on him/her. The appeal is lodged with the Administrative Court that decides on the appeal in a judicial procedure. In accordance with Article 13 of the IPA, support and legal assistance to asylum seekers in procedures before the Administrative Court of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia are provided by counsellors for refugees (lawyers/attorneys appointed under the conditions of the IPA). The costs (remuneration) are covered by the state budget, unless the asylum seeker has own sufficient means and can afford to pay for the legal assistance. These rules apply to the procedure of the appeal against the detention order. The law does not provide for free legal aid on first instance, however it is performed by an NGO - Legal-Informational Centre for NGOs - PIC, which was selected based on an open call.

Detention is ordered by a decision issued by the Ministry of Interior. The written detention order is issued by the responsible authority within 48 hours after the asylum seeker was informed about the order orally. Detention may stay in effect until the grounds for detention exist, but not longer than three months. If after three

months the grounds for the limitation of movement still exist, the limitation may be extended for a further period of one month. The law does not contain any provisions establishing specific obligation for periodical and individual review during that time.

In its legal nature the detention order detaining the asylum seeker to the area of the Asylum Home (considered an alternative) is identical to the detention order detaining the asylum seeker to the Aliens Centre and the asylum seeker has the right to appeal against the decision on this alternative in the manner described above.

Returnees

Returnees may appeal against the detention order within eight days after the decision was served. The Ministry of Interior is the authority responsible for deciding on the appeal within eight days (Article 78 of the AA). This is done in an administrative procedure. The AA stipulates that an appeal shall not withhold the execution of the decision. Following the decision of the ministry, judicial review of the decision on appeal is allowed. The Administrative Court shall decide upon the action within eight days (judicial procedure).

Returnees detained at the Aliens Centre have the right to establish a contact with their legal representatives, family members, guardians and competent consular authorities.

However, the law does not provide for the right to free legal assistance and representation. For returnees, free legal assistance is provided only in proceedings before courts relating to the decision of the Ministry of Interior on the appeal against a return decision.

In accordance with the AA, detention may only last for the period necessary to deport the alien from the country, but no longer than six months (Article 76(4) of the AA). If it is not possible for objective reasons to deport an alien even after six months have elapsed, the police may extend the accommodation at the Centre (detention) for further six months due to the failure of the alien to cooperate in the deportation procedure/ due to delayed acquisition of documents from third countries / or due to a pending procedure of establishing identity, if it is realistic to expect that it will be possible to deport the alien within that period. In addition to the possibility of extending detention and accommodation at the Centre, the police may also determine another place of accommodation for the alien outside the Centre until his/her deportation, where he/she must observe the rules on accommodation outside the Centre- the alien may otherwise be accommodated at the Centre again. Judicial review of the decision on extending restriction of movement is allowed - the Administrative Court shall decide on the action within eight days.

The law does not contain any provisions establishing specific obligation for periodical and individual review during the time of detention. The Draft Act Amending the Aliens Act that is currently pending the legislative procedure in the National Assembly provides for the obligation of the review of the placement in detention which shall be performed by the Ministry of Interior before three months of detention have lapsed. Judicial review by the Administrative Court shall take

place in case of extension of detention for additional six months; the court shall review detention upon the request of the alien or *ex officio* before three months of detention have lapsed.

Decision to replace detention at the Aliens Centre with more lenient measures is issued by the police *ex-officio* or upon a request of an alien (Article 81(1) of the AA). According to Article 81(4) of the AA appeal against a decision with which the police refused the alien's request for a more lenient measure is not allowed. The alien therefore only has the possibility to appeal against the decision on detention, claiming that more lenient measures should be enforced. The law does not prescribe a specific procedure to object the imposition of a more lenient measure.

Permission to stay is issued by the police *ex-officio* or upon a request of an alien (Article 81(1) of the AA). The law does not prescribe a specific procedure to object the imposition of permission to stay but it also does not prevent the appeal as that is the case with a more lenient measure. Therefore an appeal against a decision with which the police refused the alien's request for permission to stay can be made in accordance with the provisions of the General Administrative Procedure Act. The Ministry of Interior would in such case be the responsible authority for deciding on the appeal. The law does not prescribe a specific procedure to object the imposition of a permission to stay.

Jurisprudence

32. Are there any precedents of returnees appealing their detention on the basis that they should fall under the application of an alternative instead? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

Jurisdiction	Date	Case Number	Brief summary
Administrative Court of the Republic of Slovenia	18.9.2012	I U 1369/2012	The defendant (ministry) placed the plaintiff (A/S) in detention at the Aliens Centre as that is necessary for establishing the identity of the asylum seeker. The court found for the plaintiff with the reasoning that any doubt in the A/S identity needs to be substantiated with reasonable grounds for such doubt - the defending party established doubt in the plaintiff's identity on the mere fact

			<p>that the plaintiff did not submit an identity document with a photograph and did not establish an additional circumstance that supports such doubt. The Court additionally found the decision of the defending party unlawful since it did not include a proportionality test of detention to the Aliens Centre in comparison to the possibility of detaining the plaintiff to the area of the Asylum Home; the defending party did not consider the plaintiff's statements that due to his kidney problems his doctor recommended physical activity, for which detention to the premises of the Asylum Home would be much more suitable; the plaintiff also claimed that placement in the Aliens Centre would interfere with his practice of religion, which the defending party has not taken into consideration.</p>
Administrative Court of the Republic of Slovenia	23.4.2012	I U 567/2012	<p>The ministry detained the plaintiff (A/S) to the Aliens Centre due to reasonable grounds of endangering other persons' life (the plaintiff was under influence of alcohol, behaving violently towards and endangering the lives of at least two other A/S by hitting them and threatening them, the police had to be called). The plaintiff claimed that in fact in the incident his life was endangered. In the opinion of the court the defendant's decision was correct, justified and appropriated. The measure was necessary, since a more lenient measure, such as detaining the plaintiff to the premises of the Asylum Home, in the given circumstances, would not have had</p>

			the required effect
Administrative Court of the Republic of Slovenia	6.6.2012	I U 799/2012	<p>The plaintiff (returnee) was detained to the Aliens Centre due to risk of absconding – he was without a residence permit and he was found guilty of forging a travel document and also his identity could not be verified. The plaintiff claimed that test of proportionality should have been used. The court rejected the lawsuit, stating that Art. 76 of the AA does not give the police the discretionary power when deciding upon restriction of movement, meaning that detention is ordered in each case where the legal requirements for detention are established. According to the court, the basic condition for detention in the Aliens Centre is that the alien is undergoing the procedure of deportation and there is a risk of absconding/ the alien fails to depart from the country by the deadline specified / the identity of the alien is not known. The plaintiff's identity was not verified and the grounds for establishing risk of absconding under Art. 68 of the AA existed – in such case the authorities do not need to further explain why there is a risk of absconding as the concept is defined in the law.</p> <p>The plaintiff also claimed that a more lenient form of restriction of movement was imposed on him under Art. 76 of the AA with the operative part of the detention order, however, the reasoning of the order obliged him to respect the house rules of the Aliens Centre, subjecting him to detention at the premises of the Aliens Centre (and the reasoning is not in line with the operative part). He believed that only strict police supervision under Art. 77 of the AA constitutes restriction of movement to the premises of the centre, while Art.</p>



			76 of the AA only implies accommodation at the centre without restriction of movement. The court stated that Art. 76 does not stipulate mere accommodation at the centre but explicitly stipulates restriction of movement.

33. Is there any precedent of returnees appealing the fact that they are subject to an alternative to detention scheme (i.e. arguing that they should be offered reception conditions in an open centre or financial assistance without any further obligation instead)? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

Jurisdiction	Date	Case Number	Brief summary
Administrative Court of the Republic of Slovenia	2.8.2013	I U 1217/2013	The plaintiff (A/S), who was detained to the premises of the Asylum Home, claimed that automatic detention, simply due to a positive result in the Eurodac is incorrect; and that the authorities in the reasoning of the detention decision merely stated that they are convinced that the plaintiff will not wait for the transfer to the responsible member state, but never substantiated such statement. The court rejected the lawsuit with the reasoning that the plaintiff was subjected to the most lenient measure of restriction of her personal liberty (detention to the premises of the Asylum Home); she herself stated that she is content with the conditions of accommodation at the Asylum Home, she has the liberty to freely decide for taking a walk in the courtyard, her husband is there with her, giving her the necessary emotional support and assistance. The measure is necessary and a possibility for a more lenient

			measure is not provided by the legislation. The interference with the plaintiff's rights is proportional with the legitimate goal of protection of rights of others.

D. Other

34. What are, in your view, the strengths of the system of alternatives to detention in your Member State?
35. What are, in your view, the weaknesses of the system of alternatives to detention in your Member State?
36. Why are according to your opinion alternatives to detention not applied in the framework of the asylum process?
37. Please add here any other interesting element about alternatives to detention in your Member State/commentary which you did not have the occasion to mention in your previous answers.
38. Please quote recent scientific books, articles, reports, substantive online commentaries that have been published about alternatives to detention in your Member State (answer even if this literature is only available in your national language and provide the complete title in your language (without translating it) with all references; indicate author, title, in case name of periodical, year and place of publication as well as publisher).
39. In case you have conducted interviews/consulted other experts/organisations in order to conclude this research please provide us with the following elements for each of them:

The alternatives to detention, which are in place for returnees, provide for a few options, which can be imposed separately or combined in order to still enable deportation from the country (the goal of the deportation procedure), while providing for a much lower level of interference with their personal liberty.

Although detention to the area of the Asylum Home for asylum seekers still implies restriction of movement, it does provide the asylum seekers with the possibility to avoid accommodation (detention) at the Aliens Centre which is under a much stricter regime compared to the one in place at the Asylum Home.

There are, however, many weaknesses of the system. There are no exemptions from detention for vulnerable groups and the law also does not prescribe any obligations of the authorities to implement alternatives with respect to vulnerable groups. The only group for which the law protects from stricter measures are unaccompanied minor asylum seekers that under the law cannot be detained to the Aliens Centre. Although, according to the Ministry, there is an informal policy that vulnerable groups of asylum seekers are never detained, this policy may change at any moment, providing no guarantees to the asylum seekers.

Another important impediment is the absence of free legal representation for returnees, subjected to restriction of movement, which is resulting in absence of case-law and therefore insight into the decision making of the police and whether and how they examine the possibilities for alternatives. The fact that returnees have no right to appeal against the negative decision concerning their request for more lenient measures further contributes to the problem.

Although the law in the opinion of authorities does provide an alternative to detention for asylum seekers and the level of rights accessible to asylum seekers is quite high, in fact there is no scheme in place that would enable alternative to deprivation of liberty, as asylum seekers' movement is still restricted to the area of the Asylum Home. In the opinion of Boštjan Zalar, the reason is that the focus of the authorities is on repression and control and the human rights aspect is rarely considered in case of asylum seekers. However, there might be another reason for absence of alternatives. As accommodation for A/S outside the Asylum Home is in general more an exception to the rule, the authorities believe that without restriction to the premises of the Asylum Home there is no difference between the A/S without grounds for detention and A/S whose circumstances indicate grounds for detention. However this should not prevent the authorities from exploring other options that would not involve deprivation of liberty.

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