



Effective Alternatives to the Detention of Migrants

International Conference organised jointly by the Council of Europe,
the European Commission and the European Migration Network

4 April 2019

Agora, Council of Europe

Strasbourg, France

This report summarises discussions and certain key messages from the Conference “*Effective Alternatives to the Detention of Migrants*”, organised jointly by the Council of Europe, the European Commission and the European Migration Network on 4 April 2019. Support materials, including the speeches and PowerPoint presentations delivered during the day are available on the [Conference webpage](#).

Key messages from the Conference

- Effective alternatives to the detention of migrants potentially have **manifold benefits** compared to the use of detention. These can include: respect for human rights; individual compliance with procedures; reduced costs as compared to detention; decreased pressures on national detention systems; greater engagement and cooperation in resolving migration status; and increased well-being of the persons concerned.
- To encourage greater use of alternative measures there is a need for more **empirical evidence of their effectiveness** as well as **increased practical and pragmatic know-how** to address persistent challenges in their implementation.
- The **effectiveness** of alternatives to detention can be measured against **three key indicators: upholding fundamental rights** and meeting basic needs; **ensuring compliance** with immigration procedures; improving the **cost-effectiveness of migration management**.
- There is a **variety of alternative measures** other than detention available that can, *inter alia*, be grouped in the following categories: surrendering the identity document and/or passport; regular reporting to authorities; use of bail/money deposit; designated residence either at a home address or other facilities; family-based care arrangements; supervision; return counselling; case management or case worker support, etc.
- To be effective, alternatives to detention should adopt a **holistic and person-centred approach** based on **responsibility and trust**. This implies, *inter alia*, that:
 - alternatives to detention should be adapted to the specific **circumstances of the individual** and **combine different tools** available to be effective;
 - instead of focusing exclusively on enforcement measures there is space to adopt **engagement-based** methods to a greater extent, including dedicated case management that can enhance effectiveness;

- access to a secure environment including housing, health and/or other basic services such as counselling and legal advice can be significant factors of effectiveness.
- In order to **establish trust and dialogue with persons undergoing immigration procedures**, it is preferable if case-managers and/or other support mechanisms are not the authority making decisions on migration status. Representatives regarded as more neutral may, for example, include social workers, city administrations, NGOs and/or independent services that are more likely to be considered as trusted interlocutors by the persons concerned, thereby enhancing constructive cooperation.
- A **multi-level coordinated approach** around shared objectives, involving both local and European institutions as well as NGOs can strengthen the effectiveness of alternatives to detention and should be promoted.

Summary of the event

The Conference “Effective Alternatives to the Detention of Migrants” was held in Strasbourg on 4 April 2019, bringing together close to 200 key national practitioners and policy makers from across Europe, aiming to provide a forum for constructive exchange and knowledge-sharing. The Conference sought to identify ways to make alternatives to the administrative detention of migrants more effective, ensuring compliance with immigration procedures while upholding human rights. The emphasis was on supporting States in strengthening their capacity to effectively implement alternatives to detention, and to share practical know-how and concrete methods of achieving success in the field.

The detention of migrants and the use of alternatives - the current context

The event was opened by facilitator **Ms Lilja Gretarsdottir** who welcomed the speakers and participants and encouraged them to contribute to the discussion on feasible alternative solutions to migrants’ detention.

Mr Tomas Boček then gave extensive opening remarks, describing his fact-finding missions across Europe and noting that immigration detention could not be a sustainable measure for human rights-compliant migration policies. Paying attention to children, with or without their families, he described how detention puts migrants and asylum-seekers at increased risk of ill-treatment and suffering. While alternative practices existed that could be further disseminated and implemented. He called on European states to learn from each other in this regard.

The two keynote speakers highlighted the significance of considering alternatives to immigration detention in line with European and international standards. **Mr Christos Giakoumopoulos** emphasised that the right to liberty is a fundamental pillar of democratic societies and remains at the core of European values. He stressed that the detention of migrants, especially persons in a vulnerable situation, is an issue of grave concern as evidenced by the findings of Council of Europe bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Recalling the principle of detention as a measure of last resort, he underlined the crucial role of effective alternatives as a means of upholding human rights and avoiding the harmful effects of detention while ensuring compliance with immigration procedures. Noting a growing interest and commitment by States and other actors to further explore and implement alternatives, Mr Giakoumopoulos underlined the need for a shift of mentality from enforcement to engagement in order to achieve the aim of effectiveness. Through increased collaboration and knowledge sharing among its Member States, he noted that the Council of Europe is stepping up its technical support in the field.

Mr Simon Mordue, while echoing the principled role of human rights and dignity in EU policies, recalled that administrative detention is allowed under EU and international law. When necessary to ensure the functioning of migration policies, especially in cases where the risk of absconding or security threats exist, resorting to detention is legitimate. However, administrative detention should only be used as a means of last resort when less coercive measures are insufficient to achieve the same outcome. Mr Mordue reiterated that alternatives to detention have the potential to bring great advantages, notably reduced costs and reduced pressure on national detention systems, as well as greater engagement

and cooperation of the third country national. There is therefore a great interest in increasing their use. At the same time, however, there is a need for more evidence about their effectiveness. The EU is making funds available to implement projects on alternatives to detention. Successful practices could be embedded in EU policies and legislation.

Essential elements of effective alternatives to the detention of migrants

Moderated by **Ms Ioana Pelin-Raducu**, the first panel of the Conference highlighted essential elements of effective alternatives and explored the processes by which alternatives have worked successfully in different contexts.

Mr Frank Schürmann gave an overview of the legal standards in the field, notably the case-law of the European Court of Human Rights and the on-going work of the Council of Europe Steering Committee for Human Rights (CDDH), as well as certain key practical aspects of implementation. He noted that the effectiveness of alternatives can be measured against three key indicators: human rights; compliance with immigration procedures; cost-effectiveness. Emphasising early and sustained engagement throughout procedures, he noted several essential elements to ensuring effectiveness in practice, namely: (a) screening and assessment; (b) access to information; (c) legal assistance; (d) case-management and case-worker support; (e) building trust in migration and asylum procedures; (f) safeguarding dignity and human rights. **Ms Sophie Magennis** outlined some of the key elements of the UNHCR policy and strategy on alternatives to immigration detention and described the processes by which diverse alternative measures have been applied in Europe and beyond. Identifying some common challenges in implementation, she highlighted specific examples on how these can be addressed so that alternatives to detention work in practice. She noted, *inter alia*, the importance of training authorities in the field. **Mr Niclas Axelsson** reiterated the need to understand the complexity inherent in the migration field, and the subsequent need for dynamic alternatives to detention in order to ensure their effectiveness. Emphasising in particular the use of regular reporting in Sweden, he underlined how migrants are assigned specific case managers that provide individual support and necessary information. **Ms Jem Stevens** referred to engagement-based alternatives and their positive outcomes as compared to more restrictive measures. She also reflected on the “community assessment and placement model” that has been shown to render alternatives to detention more effective. These include: early intervention; provision of a holistic case management focused on case resolution; cooperation between authorities and communities; ensuring minimum standards; and access to information.

Testing and evaluating alternatives in practice

Moderated by **Mr Morten Ruud**, the second panel discussed examples of ongoing pilot projects in Europe, highlighting the main elements of success.

Ms Alison Wray outlined the aim and approach of the first programme in a series of four planned pilot actions recently started in the United Kingdom. A key characteristic of the programme is its design and operation in close cooperation with the NGOs working on community integration services. To achieve the overall objective of reducing the need for detention and implementing alternative measures, the pilot embraced a holistic approach based on five pillars: (a) stable living conditions; (b) reliable information; (c) community support; (d) active engagement with migration services; (e) counselling about planning the future (either in case of stay in the country or of return to the country of origin). A monitoring system is fully embedded in the architecture of the programme, with the critical scope to collect sound evidence of its efficiency. **Mr Jan Braat** presented a recent initiative undertaken by the C-MISE project, a network of 11 cities from diverse European countries gathering good practices and policies in the field of migration. Acknowledging the critical role that cities play in migration management, this initiative advocates for a multi-level coordinated approach creating synergies among EU, national and local level actions. Outcomes have so far been promising in preventing and/or reducing illegal stay. **Mr Thomas Dunning** brought to the discussion the Irish experience with unaccompanied migrant minors. Since 2010, the implementation of the “equity of care” principle has constituted a major shift in Irish policy. Every child arriving in Ireland is immediately assigned a qualified social worker whose responsibility it

is to ensure that the best interests of the child are a primary consideration in all actions taken. The system centres around building a trusted relationship with the child as well as across diverse sectors such as child protection, immigration and police. No child in Ireland is detained for immigration purposes and a number of lessons learnt and good practices have been identified, including on how to avoid children going missing. **Ms Radostina Pavlova** presented the preliminary results of the mid-term regional evaluation of the engagement-based pilot actions designed by the European Alternatives to Detention (ATD) Network, and the outcomes of a pilot project implemented in Bulgaria. The evaluation showed that 97% of participants remained engaged with the programme and cooperated on the resolution of their case; 88% of cases progressed towards a resolution and all 100% of cases improved the level of personal wellbeing.

Good practices and lessons for the future

Moderated by **Mr Mikhail Lobov**, the last panel of the Conference brought together actors from authorities, international institutions and civil society who reflected on two key aspects in the implementation of alternatives to the detention of migrants: collaboration between diverse stakeholders and sharing of good practices.

Mr Simon Chassard stressed that States needed proof of the effectiveness of alternative measures in order to further engage. In France, previous experience showed that detention may be more effective than its alternatives, depending on the duration of detention and individual circumstances, and the assessment of the risk of absconding. However, in the last couple of years, efforts had been made to increase effectiveness of alternatives to detention mainly by means of a tailor-made approach combining several tools with each other and through a high quality support to migrants. **Ms Kadri Soova** emphasised that cooperation between governments and civil society organisations is crucial to ensure a balanced combination of enforcement and an engagement-based approach. Furthermore, civil society is likely to be perceived as a more entrusted actor by the person concerned. Launching pilot projects, evaluating them and drawing conclusions could be an important step towards closer cooperation between government and civil society, alongside information-exchange. **Mr Adriano Silvestri** underscored the need for increased implementation across the European Union of alternatives to detention that incorporate the social work/engagement elements to enhance trust-building between the migrant and the authorities. Cooperation among institutional and non-governmental actors is also needed to mobilise the necessary financial resources and know-how to implement alternatives to detention. In this context, the European Union Agency for Fundamental Rights (FRA) is working on an updated handbook on alternative to detention measures, based on individuals' needs which aims at being a practical tool for practitioners. **Mr Laurent Chapuis** presented a good practice example of alternatives to detention of children in Greece where existent measures had been insufficient, and a holistic, systemic approach was being applied instead. Four key systemic measures have been adopted in an effort to improve the situation: strengthening data; aligning national policy and legal frameworks; investing in national oversight capacity; and designing, domesticizing and scaling-up alternatives to detention. Regarding the latter, several alternatives are used in Greece, based on each case, and ranging from group home-type shelters, supported independent living schemes and foster families, to safe zones or hotels when immediate measures are required. **Ms Eva Pastrana** concluded the discussions by presenting the European Programme for Human Rights Education for Legal Professionals (HELP, <http://help.elearning.ext.coe.int/>), a Council of Europe programme that offers courses on various legal topics, including a course on asylum as well as on refugee and migrant children. A new course on alternatives to detention of migrants is to be developed before the end of this year based on the upcoming Council of Europe handbook in the field and the existing *Analysis on the Legal and Practical Aspects of Alternatives to Detention in the Context of Migration*.

Concluding remarks

In conclusion, Mr **Magnus Ovilius** highlighted the need for a tool that provides an overview of evidence-based information on alternative measures to the detention of migrants. Stressing the importance of such a tool, Mr Ovilius called for the creation of a European evidence-based matrix for practitioners' and officials' use. Such a tool could also be pivotal in the delivery of counselling for voluntary return. Mr **Stephen Ryan** stressed that detention is a measure that entails financial costs and has negative implications for migrants' well-being; for that reason, alternative solutions should be available, but proof of their effectiveness is crucial. States should provide a range of alternatives that could be tailored to migrants' vulnerabilities and needs in order to improve effectiveness and secure migrants' cooperation with authorities. To date, there are many examples of alternative measures and therefore, information is available on what measures work better than others. Indeed, States are hesitant to implement alternatives to migrant detention due to lack of evidence-based information, acknowledging that providing effective alternatives requires financial investment. The European Union's funding could be used to provide the necessary financial incentives so that States could deliver on alternatives to detention and meet their legal obligations in this regard. Finally, Ms **Lilja Gretarsdottir** concluded the event, referring to seven key expressions that summarised the 'take-aways' of the conference, namely the need to: (1) **commit** to upholding human rights by applying effective alternatives to immigration detention in practice and ensuring that detention is only used as a measure of last resort; (2) strengthen **trust-building** and professional engagement with persons undergoing immigration procedures; (3) advance **knowledge** and share practical know-how in the field; (4) adopt a **step-by-step** approach by testing pilot programmes on a small scale to understand how to overcome challenges on a larger scale; (5) **tailor** alternatives to particular individual and national contexts; (6) make available a **variety** of alternative measures in policy and in practice; (7) enhance **cooperation** across different sectors as a central key to making progress.

Keynote Speakers

- **Tomas Boček**, Special Representative of the Secretary General on Migration and Refugees, Council of Europe
- **Christos Giakoumopoulos**, Director General of Human Rights and Rule of Law, Council of Europe
- **Simon Mordue**, Deputy Director-General, Directorate-General for Migration and Home Affairs, European Commission

Panelists

- **Frank Schürmann**, Professor of International Human Rights Law, former Government Agent of Switzerland to the European Court of Human Rights, Rapporteur of CDDH-MIG
- **Sophie Magennis**, Head of Unit, Policy and Legal Support, UNHCR Bureau for Europe
- **Niclas Axelsson**, Specialist on Detention Issues, Swedish Migration Board
- **Jem Stevens**, Europe Regional Coordinator, International Detention Coalition
- **Alison Wray**, Deputy Director, Strategy and Planning Directorate, Immigration Enforcement, UK Home Office
- **Jan Braat**, Senior Policy Advisor, Migration and Integration, City of Utrecht
- **Thomas Dunning**, Principal Social Worker, TUSLA Child and Family Agency, Ireland
- **Radostina Pavlova**, Legal Expert and Advocacy Officer, Center for Legal Aid – Voice in Bulgaria, Bulgaria
- **Simon Chassard**, Legal Advisor of the General Director for Foreign Nationals in France, General Directorate for Foreign Nationals in France, Ministry of the Interior
- **Kadri Soova**, Deputy Director, PICUM
- **Adriano Silvestri**, Head of Sector, Asylum, Migration and Borders, European Union Agency for Fundamental Rights (FRA)
- **Laurent Chapuis**, Regional Advisor on Migration for the UNICEF Regional Office for Europe and Central Asia

- **Eva Pastrana**, Head of the European Programme for Human Rights Education for Legal Professionals (HELP) Unit, Council of Europe
- **Magnus Ovilius**, Chair of the European Migration Network, Directorate-General for Migration and Home Affairs, European Commission
- **Stephen Ryan**, Deputy Head of Unit, Asylum Unit, Directorate-General for Migration and Home Affairs, European Commission

Moderators

- **Ms Lilja Gretarsdottir**, Deputy Head of Division, Human Rights Policy and Cooperation Department, Council of Europe
- **Ioana Pelin-Raducu**, Policy Officer, Asylum Unit, Directorate-General for Migration and Home Affairs, European Commission
- **Morten Ruud**, Chair of CDDH-MIG and Vice-Chair of CDDH, Special Adviser at the Norwegian Ministry of Justice and Public Security
- **Mikhail Lobov**, Head of Human Rights Policy and Cooperation Department, Council of Europe