



ASK THE EXPERT
POLICY BRIEF

May **2019**

Magdalena Lesińska

Towards alternatives to detention

MIGRATION



The **Ask the Expert Policy Briefs** are **highly informative tools** proposed in the framework of the ReSOMA project. They tap into the **most recent academic research** on the 9 topics covered by ReSOMA and map it out in a way that is **accessible to a non-academic audience**. By doing so, the briefs introduce the **policy-relevant research** conducted by researchers with different approaches and perspectives on the same topic.

LINGUISTIC VERSION

Original: EN

Manuscript completed in May 2019

Unless otherwise indicated, the opinions expressed in this document are attributable only to the author and not to any institution with which he is associated, nor do they necessarily represent the official position of the European Commission.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

Contact: resoma@resoma.eu



This project has received funding from the European Union's Horizon 2020 research and innovation program under the grant agreement 770730

Ask the Expert Policy Brief

Towards alternatives to detention

By Magdalena Lesińska

Concerns about the increasing use of detention

The excessive use of detention in the immigration framework has been widely criticized in recent years. UNHCR in the Global Strategy (2014, p.5) concludes it straightforward: “putting people in detention has become a routine – rather than exceptional – response to the irregular entry or stay of asylum-seekers and migrants in a number of countries”. The high proportion of detained individuals released from detention, and the fact that vulnerable individuals (including minors) are regularly found in detention, indicate that the system is inefficient for the authorities and inhumane and alienating for migrants (ECRE 2017; Fili 2018; Mat-evžič 2019). According to EU law (Reception Conditions Directive, Returns Directive and Dublin III) as well as the European Convention of Human Rights (article 5) and Council of Europe recommendations, deprivation of liberty for immigration-related reasons can only be used as a measure of last resort. This entails that the national competent authority, administrative or judiciary, once it has been ascertained that there are grounds for detaining

the individuals, is obliged to evaluate whether the aims pursued can be achieved through a less coercive measure (Mangiaracina 2016).

The expanding evidence suggests that long detention processes reduce migrants' trust in the system as well as their wellbeing and mental health as they are separated from their families, communities, support groups and lawyers (Coffey 2010; Silverman, Massa 2012). The studies consistently demonstrate that detainees experience high levels of mental health problems, including anxiety, depression, fear, post-traumatic stress disorder both during and after detention (Keller et al. 2003; von Werthern et al. 2018). These negative effects are reinforced also because detention often takes place in places and in conditions that do not meet human rights standards. Detention of children brings devastating effect in particular on their physical, emotional and psychological development (Delbos et al. 2010; Zwi et al. 2018). Although immigration detention should remain an administrative and non-punitive measure, and as such distinct from criminal detention, the recent research shows something contrary. A study in Swedish immigration

detention centers indicates that detainees feel that they are punished for a crime that they have not committed and consider detention as a prison (Puthooppambal et al. 2015). The recent advocacy push for alternatives to detention has emerged in response to more restrictive migration policies and tougher measures against irregular migration around the world, of which detention is only one of the symptoms. There is a common call for less intrusive measures, which are usually referred to as alternatives to detention.

Alternatives to detention

In view of the lack of legal understanding of the term alternative measures to detention, in this regard some definitions have been made by international organisations and scholars. The widely accepted interpretation provided by International Detention Coalition (IDC) is as follows: “any legislation, policy or practice that allows for asylum seekers, refugees and migrants to reside in the community with freedom of movement while their migration status is being resolved or while awaiting deportation or removal from the country” (IDC 2015, p. 12). According to IDC, alternatives to detention represent a shift from security and restrictions to a pragmatic and proactive approach focused on case resolution.

The increasing interest in alternatives to detention from governmental actors and civil society organizations is reflected in guidance and recommendations addressed to policy makers and practitioners on the use of non-custodial measures for asylum seekers and people in return procedures (FRA 2015, IDC 2015). The recommended measures embrace e.g. duty to stay in a particular location in open facilities, often combined with regular reporting requirements to the police or immigration authorities at regular intervals, and/or electronic monitoring. These instruments improve individual health and wellbeing, increase participation in immigration procedures, and ease

the process of integration for individuals who obtain the right to remain. The important argument is also that detention is inherently more expensive than providing open reception or other alternatives to detention¹. There is evidence that for migrants in a return procedure, the impression of fairness in the procedure and transparency in communication would facilitate decision on voluntary return (Edwards 2011). Obviously, in the context of asylum procedure, alternatives to detention can fulfil the interests of all parties: asylum seekers, host society and the governments by building greater fairness, accountability and trust into the system.

The Community Assessment and Placement model (CAP model) is one example of detention alternatives (IDC 2015). It is grounded on research findings revealing that the most effective alternatives to detention are based on case management, keeping individuals engaged in immigration procedures and meeting the basic needs of individuals and involving a clear referral mechanism that links screening and assessment with placement decisions. The CAP model is based on a social work approach, individual relation and counselling. Asylum seekers or people in return procedures are placed in

open facilities and provided with individual coaches or counsellors to inform and advise them about their situation and options. The case manager ensures that the individual has access to information about the immigration or asylum process and that the government has up-to-date and relevant information about the person. The comparative research by UNHCR on detention procedures also confirms the crucial importance of access to early reliable legal advice and assistance, life at liberty with suitable reception conditions and holistic support of migrants (Costello, Kaytaz 2013). The general recommendation from research studies is to shift the detention system from enforcement to engagement. Alternatives to detention should assist migrants going through the system to understand the rules and participate better in immigration procedures, enabling their cases to be resolved in a fair, timely and humane manner, with the minimum use of enforcement.

¹ According to the Odysseus Network Research, detention is inherently more expensive than the alternatives. In Canada, detention was 93% more expensive, while in Australia,

detention costs exceeded those of the alternatives by 69%. Generally, using alternatives to detention will save approximately 70% of the overall costs (De Bruycker et al., 2015, p. 23).

Alternatives to detention in practice

All available data shows that introducing alternatives to detention is, in fact, more pragmatic approach with regards to the relationship between decisive factors such as the length and effectiveness of procedures, the risk of the migrant absconding, cost-effectiveness and the human rights impact (Dušková 2017). The comparative research among EU member states shows that the potential alternatives to detention are available in most of the EU member states and include reporting obligations, residence requirements, the obligation to surrender their identity or travel documents, release on bail, electronic monitoring, the provision of a guarantor, or being released to cooperate with care workers (EMN 2015). However, there are several differences regarding measures which are available, categories of third-country nationals that can be subjected to alternative measures, the

kind of authorities that can make a decision. Practical implementation of alternatives to detention varies among the countries, in many cases the use of alternatives is rather rare and applied usually only to asylum seekers (EMN 2015).

According to many scholars, the increasing level of detention is part of a wider process of criminalisation of migration, where immigration law has been absorbing the theories, methods and priorities associated with criminal enforcement (Bloomfield 2016; Stumpf 2006). The excessive use of detention could also serve political purposes as a tool of managing popular anxiety of “undesirable foreigners”, asserting state control over territorial borders and integrating international migration into security framework (Bourbeau 2019; Leerkes, Broeders 2010; Majcher, de Senarclens 2014; Sampson, Mitchell 2013).

Bibliography:

Bloomfield Alice (2016). Alternatives to Detention at a Crossroads: Humanisation or Criminalisation? *Refugee Survey Quarterly*, vol. 35.

Bourbeau Philippe (2019) Detention and immigration: Practices, crimmigration, and norms. *Migration Studies* 7 (1).

Coffey Guy J., Kaplan Ida, Sampson Robyn, Tucci Maria M. (2010). The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum. *Social Science & Medicine* 70 (12).

Costello Cathryn, Kaytaz Esra (2013). *Building Empirical Research into Alternatives to Detention: Perception of Asylum seekers and Refugees in Toronto and Geneva*. United Nations High Commissioner for Refugees.

De Bruycker Philippe (ed.) (2015). *Alternatives to Immigration and Asylum Detention in the EU. Time for the implementation*. Odysseus Research Network.

Delbos Laurent et al. (2010). The reception and care of unaccompanied minors in eight European countries comparative study and harmonisation prospects. Final report, Institute for Rights, Equality and Diversity, France Terre d'Asile, Consiglio Italiano per i Rifugiati.

Dušková Šárka (2017) Migration Control and Detention of Migrants and Asylum Seekers – Motivations, Rationale and Challenges. *Groningen Journal of International Law*, vol. 5(1).

ECRE (European Council on Refugees and Exiles) (2017). *Boundaries of liberty: Asylum and de facto detention in Europe* (<http://www.asylumineurope.org/sites/default/files/shadow-reports/boundariesliberty.pdf>)

Edwards Alice (2011). *Back to Basics: The Right to Liberty and Security of Persons and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*. United Nations High Commissioner for Refugees.

EMN (European Migration Network) (2014). *Synthesis Report – The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*, November 2014.

Fili Andriani (2018). Immigration detention in Greece: Contemporary challenges, A briefing paper (https://www.law.ox.ac.uk/sites/files/oxlaw/greece_briefing_paper.pdf)

FRA (European Union Agency for Fundamental Rights) (2015). *Alternatives to detention for asylum seekers and people in return procedures*.

IDC (International Detention Coalition) (2015). *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention* (Revised).

Keller Allan S. et al (2003). Mental health of detained asylum seekers. *The Lancet*, vol. 362, issue 9397.

Leerkes Arien, Broeders Dennis (2010). A Case of Mixed Motives? Formal and Informal Functions of Administrative Immigration Detention. *British Journal on Criminology*, vol. 50.

Majcher Izabella, de Senarclens Clément (2014). Discipline and Punish? Analysis of the Purposes of Immigration Detention in Europe, *AmeriQuests*, 11 (2).

Matevžič Gruša (2019). *Crossing a Red line. How EU Countries Undermine the Right to Liberty by Expanding the Use of Detention of Asylum Seekers upon Entry: Case Studies on Bulgaria, Greece, Hungary, and Italy*. Hungarian Helsinki Committee

Marsh Kevin, Venkatachalam Meena, Samenta Kunal (2012). *An economic analysis of alternatives to long term detention*. Final Report Matrix Evidence September 2012 (<http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/Matrix-Detention-Action-Economic-Analysis-0912.pdf>).

Mangiaracina Annalisa (2016). The Long Route Towards a Widespread European Culture of Alternatives to Immigration Detention. *European Journal of Migration and Law* vol. 18.

Puthooppambal Soorej Jose, Ahlberg Beth Maina, Bjerneld Magdalena (2015). A Prison with Extra Flavours: Experiences of Immigrants in Swedish Immigration Detention Centres. *International Journal of Migration, Health and Social Care* 11 (2).

Sampson Robyn, Mitchell Grant (2013). Global trends in immigration detention and alternatives to detention: practical, political and symbolic rationales. *Journal of Migration and Human Security* 1 (3).

Silverman Stephanie J., Massa Eveline (2012). Why Immigration Detention is Unique. *Population, Space and Place* vol. 18(6).

Stumpf Juliet (2006). The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review* vol. 56.

UNHCR (2014). *Beyond Detention. A Global Strategy to support governments to end the detention of asylum-seekers and refugees.*

von Werthern Martha et al. (2018). The impact of immigration detention on mental health: a systematic review. *BMC Psychiatry* 18(1).

Zwi Karen et al. (2018). The impact of detention on the social-emotional wellbeing of children seeking asylum: a comparison with community-based children. *European Child & Adolescent Psychiatry* 27 (4).

ReSOMA

RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

🌐 www.resoma.eu

🐦 [@ReSOMA_EU](https://twitter.com/ReSOMA_EU)

✉ resoma@resoma.eu

