FUNDACIJA GEA 2000 eno sonce za vse | HELSINSKA FUNDACJA PRAW CZŁOWIEKA | ORGANIZACE PRO POMOC UPRCHLÍKŮM | Dansk Flygtningehjælp Giv flygtninge en fremtid | The Halina Nieć Human Rights Association | ΑΠΑΝΕΜΙ

Survey on Alternatives to Detention of Asylum Seekers in EU Member States

Edited by Natasa Chmelickova

The regional coalition 2006
www.alternatives-to-detention.org

This project was supported by the European Commission, Directorate-General for Justice, Freedom and Security

TABLE OF CONTENTS

ACKNOWLEDGEMENT

Mutual concerns for asylum seekers in detention, including alternatives to detention, conditions and treatment, access to assistance, length of stay, efficiency of judicial review and protection needs of vulnerable groups, motivates the partners: Organization for Aid to Refugees (OPU) from the Czech Republic, Poland Helsinki Foundation for Human Rights (Polish HFHR), Foundation GEA 2000 from Slovenia and Apanemi from Cyprus, to form the Regional Advocacy Coalition. The Regional Advocacy Coalition has helped each participating NGO accomplish more with their monitoring by dividing up areas of work, especially in the supportive studies, by defining common positions and strategies and thereby strengthening advocacy work, by implementing joint programs that ensure high standards, evaluation and review, creates support measures for long term sustainability and by learning from shared experiences.

As coordinator of the project, I would like to thank the national coordinators: Sona Aujeska and Natasa Chmelickova from OPU, Pawel Hermelinski from HFHR, Julia Kalimeri from Apanemi and Katerina Kromar from Gea 2000, for enthusiastic work on the project and good cooperation.

I would like to extend my thanks to the NGOs in EU Member States for cooperation. Many NGOs filled and sent to us the Questionnaire for survey and country by country analysis of the conditions of the detained asylum seekers in all 25 EU Member States.

I would like to stress thanks for the contribution of Martin Rozumek, OPU director, for representing the Regional Advocacy Coalition on the PRE-EXCOM Meeting (occurred before UNHCR Global Consultations) and for preparing the advocacy meeting and leading the delegation to Brussels.

My thanks belong also to Bettina Chu from Danish Refuge Council who was consultant on the First and the Second Regional Coalition Meeting and Efstathios Mavrotheris who was evaluator on the First Regional Meeting in Cyprus.

Special thanks to Natasa Chmelickova for editing the Survey on Alternatives to Detention of Asylum Seekers in EU Member States.

Last, but not least, my thanks belong to EC, Directorate-General Justice, Freedom and Security for their funding and support of this much needed project and editing of this brochure.

At the end, I hope that we fulfilled the expectations of the project's initiator Courtney Schusheim.

Dzana Nidzar Popovic
Project Coordinator

A. INTRODUCTION

1. CONTEXT

European governments are increasingly using detention as a tool to manage migration. They are cooperating on this issue, exchanging information and using joint border police actions to detain migrants, including asylum seekers. To counter detention practices which violate the rights of asylum seekers, European NGOs must also share information and cooperate in a concerted fashion.

The Project partners (Organization for Aid to Refugees (OPU) from the Czech Republic, Helsinki Foundation for Human Rights from Poland (Polish HFHR), Foundation GEA 2000 from Slovenia and Apanemi from Cyprus) obtained the opportunity to form the Regional Advocacy Coalition during the implementation of the project "Monitoring Detention of Asylum Seekers in New Member States" supported by EC, Directorate- General Justice, Freedom and Security in the year 2006.

The project: "Monitoring Detention of Asylum Seekers in New Member States" aims to improve the conditions of detained asylum seekers in Europe and ensure full respect of their fundamental rights by advocating for limited use of detention[1] and by finding and promoting alternatives to detention. Through the Project implementation, the partners will publish several publications such as Survey on Detention in EU Member States, Comprehensive Study on Alternatives to Detention and numerous advocacy tools. The partners will develop or expand national monitoring programs. They will set high monitoring standards for NGOs in new Member States and will raise the Community and region's awareness of the situation of asylum seekers in detention.

Although the number of asylum claims lodged in European countries has continuously dropped over the last few years, the political importance in Europe of how well or how badly a government is managing its national asylum system has not diminished. The current disparities between European asylum systems are the cause of many of the problems associated with asylum such as illegal transit/residence, onward movements, delay and associated lack of public confidence. EU Member States have increasingly recognized that they must co-operate on matters of asylum to better address the challenges they face. As a result a first set of binding laws establishing minimum standards were agreed between 1999 and 2004, and now the EU has set itself the goal of establishing a Common European Asylum System by 2010. But it cannot be said that states are yet seriously co-operating at the European level: recent years have seen their constant efforts to tighten their own national legislation and increasing efforts to shift responsibility for processing asylum claims either to each other or outside of the EU altogether[2].

The partners share UNHCR's definition of "detention": Confinement within a narrowly or restricted location, including prisons, closed camps, detention facilities, or airport transit zones, where freedom of movement is substantially curtailed, and the only opportunity to leave this limited area is to leave the territory[3].

2. SCOPE, STRUCTURE AND PURPOSE

The ten new EU Member States share similar concerns about the detention of asylum seekers:
- conditions amounting to inhuman and degrading treatment
- inadequate or poor material conditions in asylum
- slow judicial review of detention cases in some countries
- concerns about length of stay in detention in some countries
- lack of NGO access to asylum seekers in detention (either because of national protocol or lack of capacity)
- lack of essential information on the number and groups of asylum seekers detained
- wide application of the use of detention and connected to this rare use of alternatives
- concerns for vulnerable groups in detention

The main questions are: How to improve the conditions of detained asylum seekers in Europe and ensure full respect of their fundamental rights? How to implement alternatives to all legal orders of EU countries? How alternatives can be used instead of detention?

The first methodological step is to do a much more in-depth analysis of the problems in country-by-country reports

(Survey on Detention in Europe and Survey on Alternatives to Detention). In particular, a thorough analysis of the laws regulating the detention of asylum seekers and asylum procedure is needed for each country. The second methodological step is to use this Survey like a useful tool for future advocacy work and help the partners (and others NGOs) in this action to hone their goals and techniques.

The brochure the Survey on Alternatives to Detention of Asylum Seekers in EU Member States has three parts. The first part of the brochure shortly describes possible alternatives to detention. The second part of the brochure is the survey of detention of asylum seekers and possible alternatives to detention in ten new member states and in old EU member states. The survey focuses on the legal aspects of detention, including the length of detention, judicial/administrative review options, asylum procedure and system of alternatives to detention. The third part of the brochure includes a summary of observations on alternatives to detention in the EU Member States.

3. METHODOLOGY OF SURVEY

The Survey on Alternatives to Detention will provide the comparison base needed to critically analyse European legislation concerning asylum seekers and the use of detention.

The survey will focus on:

- the legal aspects of detention
- the judicial – administrative review
- the asylum procedures
- the system of alternatives to detention

The first methodological step is to do much more in-depth analysis of the problems in country-by-country reports. This Survey will provide a useful tool for future advocacy work and will help the partners in this action to hone their goals and techniques.

The work on the study was divided among the partners NGOs. The partners NGOs used the scoreboard techniques. We asked the NGOs in all EU country to fill in the Questionnaire.

Please note: Unless specified otherwise, the sources of the information have been the questionnaires filled in by the partner NGOs.

B. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS

The objective of this brochure is to offer an overview of applicable alternatives to detention of asylum seekers in the EU countries. Not all EU countries provide for alternatives to detention of asylum seekers under their relevant national legislations and the ones that do often set out very demanding requirements for their application. An important part of this brochure constitutes information on asylum and detention procedures as both of them complete the picture of alternatives to detention.

The purpose of this brochure is to introduce systems of alternatives to detention mainly to countries where such systems have not yet been established as well as to countries, in which they remain unused because of their complexity. For these countries, the practices of other countries may serve as an inspiration on how alternatives to detention can be used.

The brochure focuses mainly on the situation of asylum seekers; this results from the Project partners' opinion that detention of asylum seekers is a problematic issue, which should be discussed on both national and European level. In the field of asylum, many negotiations have already taken place and in the opinion of the Project partners, attention should now focus on the issue of detention of asylum seekers.

This brochure is in certain extent built on the 2006 UNHCR Handbook entitled "Alternatives to Detention of Asylum Seekers and Refugees" by Ophelia Field. Very useful was especially the list of various alternatives contained in this

publication and partially also information on the situation in individual countries.

The content and system of the brochure has been discussed at the Second Regional Meeting organized in Prague on 24-26 October 2006, in which partners of the "Monitoring of the Asylum Seekers' Status in Detention Centres for Foreigners" Project have taken part. The preparation of this brochure has been supported by the Organization for Aid to Refugees (Czech Republic), Helsinki Committee (Poland), Apanemi (Cyprus), Danish Refugee Committee and GEA (Slovenia).

1. CONCEPTS AND DEFINITIONS[4]

DETENTION

Legally, detention is an administrative measure and not a measure of the penal system, although its use takes on characteristics of criminal incarceration. Thus it is neither pre-trial detention on remand nor imprisonment after a court trial. The notion "administrative detention" highlights this important difference.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

The United Nations High Commissioner for Refugees (UNHCR) defines "detention" as "confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory".

UNITED NATIONS GENERAL ASSEMBLY

In 1988 the UN General assembly defined "detention" as "the condition of detained persona as defined", and states that "detained person" means "any person deprived of personal liberty except as a result of conviction for an offence".

EUROPEAN UNION (EU)

The EU Council defines "detention" as the "confinement (…) by a Member State within a particular place, where (a person) is deprived of his or her freedom of movement". The EU Commission defines it as "the confinement of (a person) by a Member State within a restricted area, where his freedom of movement is substantially curtailed". The question of how to define "detention" gets even more difficult, when it comes to the multitude of languages in Europe. For instance, the English notion of "detention" is "retention" in French, meaning that somebody is "retenu', i.e. "held back" from doing something; in German, "detention" is translated as "Gewahrsam", which means in English "custody".

The very definition of what constitutes "detention" is certainly rooted in the difference between legal cultures and traditions in Europe; however, it must also be attributed to the different interests of various groups.

DETENTION CENTRE

The language used to describe the places where asylum-seekers and irregular labour immigrants are "detained", vary to the same extent as the notion and definitions of detention.

Detention of aliens is foreseen by the legislation of all surveyed countries. This is motivated by the States' efforts to protect public order from undesirable and illegal acts of foreign nationals. Most countries detain also asylum seekers, i.e. foreigners who apply for asylum in detention centres for foreigners. This practice is problematic for several reasons. Firstly, the submission of asylum claim makes the foreigner's residence on the territory legal until the time when his claim is finally rejected by the last instance. Detention is therefore redundant. Secondly, even though many asylum claims are based on economic or other irrelevant grounds, there are also persons fleeing persecution in the sense of the Geneva Convention who end up in the detention centres. In some countries (e.g. in the Czech Republic), asylum claims submitted in detention centres for foreigners are processed under accelerated procedure where meritory

reasons are not assessed. A genuine refugee's claim could therefore be rejected and the refugee could be expelled to his country of origin.

Another problem related to detention is the States' practice to detain unaccompanied minors and members of other vulnerable groups (such as families, victims of trafficking, old and sick persons). The States' practices vary greatly which is considered to be a fundamental problem by the Project partners; in their opinion, harmonization of legislation on the European level is needed in this field. Our brochure does not focus on alternatives to detention for vulnerable groups, as the placement of these groups in detention centres for foreigners is questionable. Special provisions are needed especially in cases of unaccompanied minors, who are sometimes detained in standard facilities used for adults, sometimes placed in special institutions designed especially for minors. In some countries, detention of unaccompanied minors does not occur at all while in others the practice varies. Also, there are different age limits for a person to be considered adult (e.g. in Germany the limit is 16 years). Problematic are also age-tests and their consequences.

By "alternatives to detention of asylum seekers" we shall understand institutes enabling asylum seekers to avoid forcible stay in detention centres. This brochure focuses only on asylum seekers who do not belong to the so-called "vulnerable groups". The Project partners realize that alternatives to detention of asylum seekers should be also accompanied by alternatives for foreigners awaiting expulsion as only then purpose-motivated submissions of asylum claims in detention centres can be prevented. The below listed alternatives usually do not distinguish between foreigners and asylum seekers.

The brochure includes also an overview of asylum and detention procedures as the Project partners consider them the necessary base for the application of alternatives to detention, without which the integrity of the whole system cannot be ensured. Airport procedures have been excluded because of their different nature.

It is necessary to note that in the field of asylum, harmonization on the EU level has been taking place for some time and asylum procedures (especially their initial steps) are therefore often very similar: in the beginning, the country's responsibility under the Dublin Regulation is being determined, then the existence of a third safe country is examined etc. If, in case of certain countries, these initial procedures have not been mentioned, it does not mean that they are not used there.

2. OVERVIEW OF ALTERNATIVES ACCORDING TO UNHCR

As mentioned above, UNHCR has published a handbook on alternatives to detention of asylum seekers. The Project partners consider this Handbook to be very useful and the following overview of alternatives has built on it in large extent. According to the Handbook (which is a new version of the previous 1999 publication), asylum seekers should not be detained at all. Exceptions are possible only after full consideration of all possible alternatives and procedures where these mechanisms have been demonstrated not to have achieved its lawful and legitimate purpose. This position is similar to the opinion of various human rights organizations. According to these organizations, detention of asylum seekers should be used only as a last-resort option when all other tools have been found insufficient or when there are well-founded reasons to consider them insufficient taking into account the individual situation of the applicant.

Many countries use the detention of asylum seekers because it makes the applicants easily available for all proceedings under the asylum procedure and facilitates their subsequent departure from the country when a final decision in their case is made. The States thereby partly rely on the deterrent effect of detention on potential new applicants. However, this deterrent effect does not distinguish between illegal migrants (whose initial intention is not to seek protection from persecution) and genuine refugees.

The Geneva Convention, which constitutes the base of the international refugee law, contains no indication under which conditions refugees can be detained. Certain strongpoints can be found in Article 31(1) stating that "the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming

directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence". This implies that "penalty" can mean either a criminal proceeding or an administrative procedure terminated by detention. Both should be avoided by States in cases where conditions of Article 31(1) have been met.

Another source, which may help to set out generally applicable limits of detention, is the International Covenant on Civil and Political Rights; the Covenant applies to all persons regardless of the reciprocity, nationality or apartism and the rights embedded in it must be guaranteed to all people without discrimination between own and foreign nationals. Article 9 and 12 of the Covenant embeds the protection from arbitrary restriction of personal freedom. Article 9(1) stipulates that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Article 12(1) says that " Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant". Article 9 does not foresee an absolute protection from detention; it must be understood as a protection from unlawful or arbitrary detention. Unlawful or arbitrary detention can be defined as detention which either has no base in law or which is based on law but not applied in a foreseeable, adequate and fair manner. Characteristics of lawful detention include periodic review of the detention and the possibility to contact courts with a request for judicial review.

The UNHCR Guidelines conclude that:

- The detention of asylum-seekers is inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs.
- Freedom from arbitrary detention is a fundamental human right, and the use of detention is, in many instances, contrary to the norms and principles of international law.
- Article 31 of the 1951 Refugee Convention, which is often applied inappropriately by Member States, exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also provides that Contracting States shall not apply to the movements of such refugees restrictions other than those necessary, and that any restrictions shall only be applied until such time as their status is regularized, or they obtain admission into another country.
- Consistent with Article 31 of the 1951 Refugee Convention, detention should only be resorted to in cases of necessity. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic nor should it be unduly prolonged. This provision applies not only to recognized refugees but also to asylum-seekers pending determination of their status.
- The expression "coming directly" in Article 31(1) of the 1951 Refugee Convention covers the situation of a person who enters the country in which asylum is sought directly from the country of origin, or from another country where his or her protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept "coming directly" and each case must be judged on its merits. Similarly, given the special problems faced by asylum-seekers, there is no time limit which can be mechanically applied to the expression "without delay".
- Asylum-seekers are entitled to benefit from the protection afforded by various international and regional human rights instruments which set out the basic standards of treatment. Every state has a right to control those entering into their territory, but these rights must be exercised in accordance with a prescribed law which is accessible and formulated with sufficient precision for the regulation of individual conduct. For the detention of asylum-seekers to be lawful and not arbitrary, it must

comply not only with the applicable national law, but with Article 31 of the 1951 Refugee Convention and international law. It must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility of release where no grounds for its continuance exist.

Most importantly, the UNHCR guidelines stress that detention of an asylum-seeker must be seen as an exceptional measure and subject to strict limitations[5].

All EU countries, including the new EU countries, have acceded to all relevant international conventions in the area of human rights.

Let us now have a look at the list of alternatives to detention. The alternatives are listed according to the UNHCR Handbook. Some of these alternatives are more suitable for aliens awaiting expulsion; some of them are suitable for both aliens and asylum seekers. The list includes alternatives restricting in large extent the movement of asylum seekers as well as alternatives, which in fact do not monitor the movement of the applicants at all. The alternative selected can be applied for the whole period of the asylum procedure or only to its part. Individual alternatives can be mutually combined (as it is the case in many countries).

ALTERNATIVES:

a) Release from detention conditional on compliance with requirements to register the asylum seeker's place of residence with the responsible authority and to report all changes of address/ask for a permission to change address;
b) Release from detention after the hand-over of travel document and/or other documents;
c) Registration using special (electronic) documents;
d) Release from detention upon the appointment of a special worker;
e) Controlled release - release to concrete individuals, family members, NGO or religious organizations with various monitoring intensity specified by the competent authority;
f) Release on "bail", signature of a contract or promise of a guarantor;
g) Application of measures ensuring the control of the detainee released (e.g. tying the provision of a fundamental need to the duty to report regularly or issuing work permit with limited time validity);
h) The duty to report regularly either personally, over the phone or in writing at the Police, Immigration Office or a special agency;
i) Release with a duty to remain in a special establishment;
j) Release with a duty to be accommodated in a specific administrative area;
k) Electronic monitoring - e.g. using special bracelets (together with movement restrictions or duty to reside in a specific area).

Let us now describe the alternatives used in practice:

The most common alternative is the placement of asylum seekers in special establishments (letter i), which are usually half-open (i.e. the asylum seeker must live in the centre but is allowed to leave the premises during the day). This is different from standard asylum residence centres where asylum seekers may leave the centre for a longer period of time. In some countries, the regime in half-opened facilities is even more open and differences between these centres and standard asylum residence centres are negligible (asylum seekers living in the special facilities are for example marked as "detained").

COUNTRY EXAMPLES: Austria, Germany

Most common and most frequently used measures include alternatives providing for reporting or registration duty (i.e. duty to register address or to report to the Police periodically). Alternatives listed under a) and h) can fall within this category. The duties are sometimes multiplied when other alternatives are applied simultaneously.The reporting alternative is often used in combination with the hand-over of travel document (especially in the case of asylum seekers). The applicant is obliged to report regularly at a specific place, to provide information on his place of residence, to come to extend his visa, receive support/assistance etc. Such reporting places can include asylum centres,

Police departments, municipal offices or other authorities. Also, the applicant does not need to report to the authorities in the place of his registered residence but may contact any authority within the country.

COUNTRY EXAMPLES: nearly all countries

Release on bail/Signing an agreement/Provision of a guarantor or surety is a relatively rare provision used in the UK or in Slovenia. The possibility of release on bail is assessed individually and the commencement of such procedure must be applied for. ECRE perceives this alternative as not very effective as many asylum seekers do not have the funds necessary. In Slovenia, the legislation allows a Slovenian national/organization to provide a written guarantee to cover all costs and to provide accommodation to the released foreigner. However, other conditions and further payment obligations required are too extensive which makes this alternative nearly unused in the practice (this year it has been used only in seven cases). In the UK, one of the guarantee options is the possibility for two people to provide approximately £2,000 as a bail. In Finland, it can be ordered that the alien must give the State a guarantee vis-a-vis costs related to his residence on the territory/return (a decision on the duty to provide guarantee is issued). The guarantee is returned when the conditions justifying detention cease to exist. Otherwise, the guarantee amount is used for the payment of expenses related to the alien's residence on the territory or his return to the country of origin (if the full guarantee amount is not used, the remaining part is returned to the applicant).

COUNTRY EXAMPLES: Slovenia, United Kingdom, Finland, Denmark

Controlled release to individuals/family members/NGOs/religious organizations. In practice, some asylum seekers manage to build certain background in the country during their residence which is interrupted by detention; if released, the asylum seeker can rely on this background. In such cases, the use of the controlled release alternative seems reasonable. The detainee can be released to an individual, with whom he has a special non-family relation (partner, former employer or friend). This individual must of course be willing to act as a guarantor and to accept the responsibility to ensure that the asylum seeker will come to all relevant meetings and appointments. This is partly similar to the previous alternative (release upon the provision of guarantor's assurances). The fact, that the guarantor is willing to accept such a responsibility, indicates his trust in the behaviour of the asylum seeker. If the asylum seeker violates his obligations, the guarantor will face financial sanctions. In ECRE's opinion, this system seem suitable especially during the first stages of the asylum procedure, less so in the phase of deportation or another type of departure from the country. UNHCR combines this alternative with monitoring, i.e. measures under letter e) (or the generally available obligation to report).

COUNTRY EXAMPLES: Slovenia, the Czech Republic in certain extent (unofficial alternative)

Release with a duty to reside in a specific administration area. Under this alternative, asylum seekers can be released on condition they reside at a specific address or in concrete administrative area. The application of this alternative can be perceived as more advantageous in comparison to the duty to reside in half-open centres. It nevertheless imposes very significant restrictions on the asylum seeker's freedom of movement. In some European countries, this system is used not only as an alternative to detention, but also as a tool distributing asylum seekers equally over the territory of the country and ensuring burden- sharing by all regions. However, this system is being criticized for not taking sufficiently into account important factors such as family ties, potential support from concrete communities, job opportunities and individual needs. This alternative is very often combined with a duty to regularly report to the Police or to another authority.

COUNTRY EXAMPLES: Denmark, Ireland

Release after the hand-over of a travel document and/or other documents. This option is often used in cases of asylum seekers. Its purpose is to prevent possible secondary movements of asylum seekers within Europe after the submission of their asylum claim. It is often used in combination with other alternatives. In practice, however, asylum seekers sometimes conceal the existence of their travel document in the beginning of the procedure in order to use it later for their departure to final destination country (if the State where the application was submitted is not the final

destination country).

COUNTRY EXAMPLES: France, Finland

Release combined with the appointment of a special worker

Even though this alternative is not met with in practice, the Project partners consider this option to be applicable and effective. The principle of this alternative corresponds in certain extent to the institute of alternative punishments under the criminal legislation. The person, who was punished or put under probation monitoring, is assigned a probation officer who monitors the fulfilment of the obligations specified; the officer may also help the alien to overcome difficult situations. In our context, this alternative seems useful for aliens awaiting expulsion. The "probation worker" can control whether the alien observes his obligations and takes steps necessary to allow his expulsion. The probation worker will get the most up-to-date information on the status of the expulsion procedure from the responsible authority. This alternative could also replace the reporting obligation (the alien would see the probation worker regularly). In case of asylum seekers, the institute of probation workers could also replace the reporting duty and ensure in theory also other services.

Implementation of measures controlling the released detainee
(e.g. provision of basic needs conditioned on compliance with periodic reporting requirement or issuance of temporary work permit).

These measures have already been functioning in many countries, however, not as alternatives to detention but as asylum seekers obligations (especially for asylum seekers living outside asylum residence centres). Their visas are made valid only for a specific period of time and in order to have their visa extended, asylum seekers must come to a specific residence centre/the Police/another authority. Similar function can be assigned also to the extension of the validity of the asylum seeker's identity card or the payment of financial support. This measure can also serve as an alternative to detention for both asylum seekers and other aliens. For aliens awaiting expulsion it would be necessary to also monitor whether they make all efforts in order to depart from the territory.

COUNTRY EXAMPLES: Czech Republic, Spain

Registration using special (electronic) documents or electric monitoring
This alternative is technically demanding - for electronic monitoring, satellite monitoring tools are used (e.g. special bracelets). This option is used mostly in cases of people released conditionally on bail during criminal proceedings, not in cases of people whose offence is rather of administrative nature. It is obvious that this alternative ensures the best possible monitoring of the given person's movements. Electronic bracelets may also signal any movements outside the specific territory to the Police.

COUNTRY EXAMPLES: under discussion in Belgium

C. SITUATION IN INDIVIDUAL COUNTRIES

The European Union has been undergoing a constant development in the area of legislation as well as on the territorial level where new and new countries have been joining in. Most important event in this context has been the extension by ten new states from the former so-called Eastern bloc. These countries, which previously fell under the dominion of the Soviet Union, used to "produce" many refugees. After the fall of the Soviet empire, they begun to rebuild their legal systems and migrants from various parts of the world started to arrive there in growing numbers.It was therefore necessary for these countries to develop legislation governing immigration and asylum issues corresponding to the international obligations and conventions and later on also to the EU norms.In the field of asylum, where harmonization on the European level has been very obvious, no substantial differences between the EU countries exist, especially in the first instance procedure. The Dublin Regulation is applied regularly as well as the third safe country notion; similar are grounds on which asylum claims are rejected as manifestly unfounded in the

accelerated procedure. More substantial differences can be seen in the appeal procedures (especially in the nature of appeal authorities) and the largest disparities can be found in the area of detention of foreigners and asylum seekers (subjects of detention, the length of detention, review of detention and possible alternatives available).

This part describes individual EU countries from the perspective of the asylum procedure, detention institute and alternatives to the detention. Firstly, the situation in the "old" EU Member States is mapped. These countries have gained extensive experience in the field of asylum and refugee issues as they have for a long time served as final destination countries. The next part of the brochure focuses on "new" EU States with their still rather "transitory" status. However, taking into account their integration into the EU structures, economic growth and upcoming participation in the Schengen space, it is not unrealistic to expect that these countries will at some point become final destination countries, especially for people from the former Soviet Union region. Nevertheless, we can also expect that because of the deep-rooted myth about rich and open Western Europe and because of the current refugee waves from Africa reaching the Mediterranean countries, this process will take more than a couple of years.

SURVEY OF ALTERNATIVES IN OLD EU MEMBER STATES

AUSTRIA

The Austrian legislation in the area of detention comprises the Asylum Act, Aliens Police Act and the Aliens Act. All these acts were adopted in 2005.

Asylum procedure[6]

The asylum procedure is governed by the provisions of the 2005 Asylum Act; it commences at the moment of the asylum claim submission. The submission of an asylum claim is followed by the assessment of the claim's admissibility (i.e. determination whether the third safe country provisions or the Dublin Regulation should apply). If this is not the case, the procedure continues. If there are reasons to consider the application manifestly unfounded, the claim can be assessed under the so-called "accelerated procedure". If the claim is rejected as manifestly unfounded, the applicant may appeal to the Federal Asylum Review Board. If the Board confirms the negative decision, no further appeal is possible.

Unless assessed as manifestly unfounded, asylum claims are examined under the standard asylum procedure and decisions are issued by the Federal Asylum Office. Appeal against negative decisions can be submitted (as well as in the case of manifestly unfounded applications) to the Federal Asylum Review Board. If the Board confirms the negative decision, the applicant can appeal to the administrative court, which shall then issue a final decision either confirming the original decision or returning the matter to the Review Board.

Detention

According to the Aliens Police Act, aliens can be detained for the purpose of deportation if this is necessary as a procedural security measure related to the prohibition of stay or expulsion order. Detention order may apply also on aliens residing legally on the territory if there are well-founded reasons to expect that they would try to avoid the above mentioned procedure.

According to the Aliens Police Act, the Aliens Police can decide to detain asylum seekers for the purpose of expulsion as a security measure under Article 10 of the Asylum Act if:

a) the asylum seeker has been issued expulsion order (Article 10 of the Asylum Act), even though the order has not been final;
b) if expulsion procedure under the Asylum Act has been initiated;
c) if the alien has been issued an expulsion order/prohibition of stay before he applied for international protection;
d) if it can be expected (on the basis of interview, photographs and fingerprints) that Austria is not the country

responsible for the examination of the asylum claim.

Detention order must be issued in the form of an administrative decision. Where aliens apply for international protection only during expulsion detention, the detention order remains in force.

Length of detention

The detention must be as short as possible and the relevant authority must keep this in mind during its work. The detention order remains effective for as long as reasons, on the basis of which it was issued, exist or as long as the purpose of detention can be fulfilled. The length of detention (with the exception of specific cases) must not exceed two months. In special cases, where final decision is still pending, the total length of detention can be up to six months. Other similar cases include also situations where people wait for the confirmation of their identity or where third countries' transit visas are pending; in such situations, the total length of detention must not exceed six months in the course of two years unless this situation has been caused by the behaviour/activities of the detainee. In such cases, the maximum length of detention is ten months in the course of two years.

Termination of detention

Detention must be terminated without unnecessary delays if the detention order has ceased to be effective on grounds foreseen by Article 80 or because the Administration Review Board found out that reasons for further detention do not exist.

A 72-hour personal freedom restriction is permissible also under Article 26 of the Asylum Act. The Federal Asylum Agency can issue an "arrest warrant" applicable to alien avoiding the asylum procedure (whose whereabouts are unknown, who voluntarily left the territory) or who did not show up for an appointment at the reception centre without having a good reason to do so. After the apprehension, it is necessary to decide into which facility/reception centre the asylum seeker is to be transferred. The restriction of personal freedom, as mentioned above, must not exceed 72 hours and must be terminated when all necessary procedures are performed. Arrest warrant is not issued if the asylum procedure has been discontinued and a new commencement is not possible, if the asylum seeker voluntarily provides information on his place of residence and it is not expected that he would continue trying to hinder the procedure or if the asylum seeker voluntarily arrives to a reception centre and it is not expected that he would continue hindering the procedure.

Alternatives to detention

The Austrian legislation also foresees alternatives to detention. Usually, the most common alternatives are applied - the reporting obligation and the duty to reside in a specific facility. According to the Austrian legislation, the Police may refrain from detaining a person for the purpose of expulsion if it can be considered that the purpose of detention can be achieved using more moderate measures. The Police use more moderate measures in case of minors; detention of minors can occur only in situations when the purpose of detention cannot be achieved otherwise.

Moderate measures specified by Austrian legislation include:

1. Duty to be accommodated in an establishment specified by the responsible authority
2. Duty to periodically report to the Police.

If the alien does not observe his obligations resulting from the specific alternative used or if he does not show up for an appointment without having serious reason for doing so, detention order can be issued.

BELGIUM

Asylum procedure

The body responsible for the asylum procedure is the Alien's Office (A.O.). The Commissioner General for Refugees and Stateless persons (CGRS) and the Permanent Commission of Appeal for Refugees (PCAR). A.O. comes under the Ministry of the Interior and controls the access to the territory, the residence, the settlement and the removal of aliens in general. This administration registers your application for asylum and examines first of ail its accessibility.

The CGRS is an independent authority and examines the asylum applications which are accessible. It does this

either directly (if the A.O. declared you accessible), or after having put an application accessible as the result of an urgent appeal. In both cases the CGRS will investigate on the merit of your request and decide on whether or not the refugee status should be adjudged. Additionally, the CGRS is the only authority competent to withdraw the judgment. At the PCA (which is a judiciary body) and only at the PCA you can lodge an appeal against a CGRS decision refusing recognition. This appeal leads either to a confirmation of the CGRS decision, or to your recognition as a refugee.

The State Council is a judiciary body where you can check if your procedure was completed legally. The Council only exercises a legality check and can never take a decision instead of the contested asylum authority. Therefore, State Council cannot recognize you as a refugee. At the Council you can ask for the annulations and in most cases also for the suspension (whether or not with extreme urgency) of the decisions of the asylum authorities. If State Council orders the suspension of a decision, it will not be carried out before the Council decides on the annulations. The annulations force the concerned asylum authority to take a new decision. Each decision of one of the asylum authorities clarifies which appeal possibilities exist[7].

It is possible to apply for asylum at different places. If a foreigner arrives in Belgium without any valid document of entry (e.g. a visa), he/she can file an asylum application either: at the border authorities (e.g. the airport) or within eight working days after arrival in Belgium, at A.O.

From the filing of your asylum application until the final decision on the judgment of the refugee status, the procedure passes through different phases:

1) the actual filing of the asylum application;
2) determination of which country is responsible for the treatment of this application (cf.3.2);
3) if this country is Belgium: the Alien's Office examines the accessibility of the application. In this phase it is decided whether or not the application is under consideration for further investigation. If this is the case, the applicant has to wait for the result of this investigation (the so called investigation on the merit of the request);
4) The investigation on the merit of the request in which first the Commissioner General for Refugees and Stateless Persons examines if the status of refugee is to be adjudged or not. A re-examination by the Permanent Commission of Appeal for Refugees (PCA) is possible.

Detention

Based on the Alien Act, the Belgian authorities may detain asylum seekers at international ports, including at the airport, if they enter without valid documents. They may detain in-country applicants without valid documents if the claim is deemed inadmissible. An asylum seeker may also be detained if he or she is considered to pose a threat to public order or national security. The only mandatory medical exam is for tuberculosis, so the public health grounds for quarantine detention are limited.

The first maximum duration of detention is two months. The Office des Entrangers/Dienst Vreemdelingenzaken can extend this period fur further two months. After this, only the Interior Minister can decide on a further extension for successive periods of one month. Normally, the duration of detention is limited to five months. Exceptionally, a period of eight months of detention is possible when the Interior Minister justifies this for reasons of public order. If, after five or eight months no decision has been taken, the person must be released.

An exception is made for detention pending the removal of third country nationals to the State responsible for examining their asylum application: the maximum duration for such cases is 2 months[8].

If a failed asylum seeker does not leave the territory on his or her own accord, he or she may be detained and expelled. He or she may be detained for a maximum period of two months which may be extended for up to five months, if:

(a) the necessary steps for removal are initiated within seven days of detention;
(b) these steps are pursued with due diligence;
(c) timely removal is foreseen;
(d) up to eight months, where the person is a threat to national security or public order.

Remedies and judicial review

An asylum seeker may only appeal the technical legality of a detention order, without entering into the facts of the

case. Asylum seekers detained may challenge their detention before the Tribunal de Premiere Instance, and such appeals have become almost routine. This is especially true in the case of children, who are usually released if suitable alternative accommodation is found.

Alternatives to detention

Asylum seekers who are not detained while awaiting decisions on the admissibility of their claims are assigned by the dispatching unit of the Aliens Office to accommodation centres run by (a) the Red Cross, (b) the State, (c) local initiatives, or (d) other nongovernmental organisations. The Federal Agency for Asylum (Fedasil) is responsible for the delivery of this centralised reception and assistance system.

When a claim is rejected, an asylum seeker is ordered to leave the country – usually within five days - and an Ordre de Quitter le Territoire ('OQT') is issued. Asylum seekers whose cases are declared inadmissible because another country of the European Union is responsible for the examination of the asylum request (Dublin Convention cases) are told to report to the Aliens Office to collect their one-way air ticket to the responsible EU Member State. The majority fail to appear. If the responsible EU Member State is a contiguous country, the asylum seeker may be detained for a few days before being driven to the border and handed over.

Electronic monitoring proposals

At the end of 2003, the Vlaamsblok political party made some proposals for the electronic monitoring of failed asylum seekers and asylum seekers deemed likely to abscond. This prompted a lively debate on the issue in the Belgian media, but as of the writing of this report, those responsible for the electronic monitoring of criminal offenders in Belgium report that they have not been asked to develop any programme by the immigration authorities.32 At present, the cost of electronic tagging involving satellite tracking would be twice or three times that which uses radio frequencies, which already costs some 10-12 Euro per capita per day (for a project monitoring, approximately 300 people). An initial investment of 250,000 Euro per device is also required and this will be lost if the device is destroyed. Thus the costs of such monitoring would only be slightly lower than the costs of detention, while guaranteeing far less control. In practical terms, the technology is only useful where there is a fixed home address with a phone line – not the most frequent circumstance for asylum seekers in Belgium – and where the person does not wish to transit to another country or otherwise abscond[9].

Obligations of asylum seekers

From the moment an asylum seekers files an application for asylum he must make a choice of residence. In official language, he has to "elect a place of residence". This elected residence is the address in Belgium where he can be contacted for the settlement of all administrative matters. All summons and other documents regarding the asylum procedure will be sent to this address. As "place of elected residence" asylum seeker can mention the open or detention centre where he stays; the private address; the address of friends where he stays, lawyer's address or the address of a social service where he passes by regularly.

It is clear that the "place of elected residence" need not necessarily be the address where the asylum seeker actually lives. If both addresses digger, it is better to go regularly to the "place of elected residence" in order to pick up the documents which have been sent.

Each time the asylum seeker wishes to change this address, he has to report it to the Alien's Office and to the Commissioner General for Refugees and Stateless Persons. If he does not report the change of elected residence, he then runs the risk of receiving letters too late or of not receiving them at all. This may have serious consequences: if asylum seeker does not answer questions and correspondence of these authorities within a month, they will assume asylum seeker is no longer interested in his asylum application. This may influence the course of the procedure negatively[10].

DENMARK

Asylum procedure[11]

The Danish Immigration Service (DIS) is the authority responsible for the assessment of asylum claims. Most cases are dealt with under the normal asylum procedure. That means that rejected asylum claims are automatically forwarded to the Refugee Appeals Board. The Refugee Appeals Board is an independent body, similar to a court, and consists of three members. The Board issues a final decision (no further remedy can be sought). If the Board in its decision confirms the negative decision of the Danish Immigration Service, the asylum seeker concerned must leave Denmark. If the Board does not agree with the decision of the DIS, the applicant is issued a residence permit. Other issues (in the area of integration) are governed by the provisions of the integration legislation.

Asylum claims can be also found manifestly unfounded. This happens if the Danish Immigration Service decides that the applicant clearly does not qualify for granting asylum. The application is then forwarded to the Danish Refugee Council, which provides its comments on the case. If the Council agrees with the Immigration Service, the application is considered manifestly unfounded and will be rejected with no protest. However, if the Council disagrees, the Service will issue its negative decision but will forward the case to the appeal body, which will then make the final decision.

In certain situations, manifestly unfounded claims can also be assessed under the accelerated procedure. This is the case of asylum seekers originating from countries where it is unlikely that they should be persecuted upon return. In such cases, asylum seekers undergo an interview and the Council subsequently comments on the case. If the Council's comments correspond to the findings of the Immigration Service, the application is rejected immediately. These cases are usually processed within several days.

In well-founded humanitarian cases, the Ministry for Immigration, Refugees and Integration may issue a temporary residence permit even if the asylum claim of the applicant was rejected. This is a discretionary competence of the Ministry and this type of residence permit is issued rarely.

Detention

In Denmark, detention related issues are governed by the provisions of the Aliens Act and the Administrative Justice Act. The regulations set out the right of aliens to enter Denmark and to reside there and they also govern the asylum procedure. According to Article 37 of the Danish Aliens Act, the length of detention should not exceed four weeks; after this period, district court judge decides (on the basis of the Police recommendation), whether the detention is to be extended by further four weeks. The maximum length of detention is not precisely specified. The advantage of this system is that detention is subjected to regular review. The administration of detention facilities falls under the competence of the Danish Prison and Probation Service. The facilities are regularly visited by the Ombudsman, representatives of the European Committee against Torture, Inhuman or Degrading Treatment and Punishment and the Danish Refugee Council. There is no deadline for the submission of asylum claims in detention centres (as it is the case for example in the Czech Republic). Detained asylum seekers are accommodated separately.

Detention of asylum seekers

Asylum seekers can be detained on the basis of the following reasons:

a) in order to determine their identity;
b) in so-called Dublin cases;
c) if the applicant does not comply with the Immigration Service decision to move into the accommodation centre;
d) if the applicant does not provide the necessary cooperation;
e) if the applicant acted violently vis-a-vis the centre workers;
f) if the asylum application is assessed as "manifestly unfounded" and the restriction of personal freedom is necessary in order to ensure the participation of the applicant - in such cases, the personal freedom restriction must not exceed seven days;
g) if it is necessary to ensure the expulsion of the alien and less intrusive methods are not sufficient for this

purpose (in case of rejected asylum seekers).

Where asylum seekers are detained, the detention decision is reviewed by a court within 72 hours. After that, regular review of the decision takes place once in four weeks. The judge will decide, on the basis of the Police recommendation, whether the detention should be extended by further four weeks. Detention of persons whose asylum claims are being assessed as manifestly unfounded must not exceed seven days. In other cases, the maximum length of detention is not specified.

Alternatives to detention

In Denmark, system of alternatives to detention is specified by the Aliens Act. The decision on the use of alternative options is made by the Police. Detention is considered as a last-resort option and under Article 36(1), alternatives to detention should be used unless these are considered as insufficient.

The alternative options include:

a) hand-over of a passport;
b) release on bail (the amount is specified by the Police);
c) specification of the place of residence - asylum seekers are obliged to reside in asylum centres; other foreigners must reside at the address specified by the Police;
d) regular reporting to the Police.

Regular reporting has been introduced in 1997 and is used in the following situations:

a) the alien did not provide information necessary in the procedure;
b) the alien did not show up for his interview;
c) the aliens behaved violently;
d) the alien did not observe his duty to reside at a specific place;
e) the alien did not cooperate with the Police in order to ensure his departure from the country.

FINLAND

In Finland, the asylum procedure is governed by the provisions of the Immigration and Asylum Act; issues related to the residence of foreigners fall under the 2004 Aliens Act.

Asylum procedure

Asylum claims are submitted either at the borders or on the territory (as soon as possible after the arrival to the Police). Here again we meet with both standard and accelerated procedure. Under the standard procedure, asylum seekers are first interviewed by the Police about their identity, arrival, relatives etc. Interview with the Directorate of Immigration follows; the Directorate will then issue its decision. In Finland, the Directorate of Immigration is the central immigration body and it is supervised by the Interior Ministry. Its competencies are widespread - it issues residence permit, deals with asylum cases and grants citizenship. If its decision is negative, the applicant may appeal to the Administrative Court of Helsinki, which will make the final decision. Exceptionally, cases can be forwarded to the Supreme Administrative Court. The accelerated procedure is similar; an appeal against negative decision can be submitted, but the person can be expelled from the country before the court makes the final decision. The grounds enabling rejection of asylum claims as manifestly unfounded include e.g. the lack of statements on human rights violations or the submission of asylum claim with the intention to misuse the asylum procedure. In cases of claims refused as manifestly unfounded, the Immigration Directorate may issue also decision refusing the admission to the territory and the Police may expel the person within eight days after the announcement of the decision.

During the asylum procedure, asylum seekers live in a reception centre where they may reside until the decision in their case is made. Accommodation is provided free of charge.

Detention

Decision on detention is issued by the Immigration Police supervised by the Ministry of Interior. Other bodies competent to issue detention decisions include the District Police, the National Bureau for Investigation, the Security Police and the National Transport Police. Aliens detained are then transferred to one of the detention centres. If the capacity of the detention centre does not suffice, the person can be placed in standard Police cells. Detention is used both after the arrival into the country and after the termination of the asylum procedure if there are reasons to fear that the person concerned may want to avoid expulsion. The detention must be announced to the district court and is reviewed within four days and then regularly once in two weeks. The court usually approves the Police proposal to continue the detention. No appeal is possible against the decision of the Police on detention or against the court's decision on detention. However, the detainee can submit to the court a complaint, which will be processed with priority. The maximum length of detention is not specified.

Reasons for detention are listed in the Aliens Act (Articles 121 - 129). These include situations when it is expected that the alien may try to prevent or avoid expulsion, if it is necessary to determine the alien's identity or if it can be supposed that he committed a criminal offence. Detention under Article 121 can replace the so-called temporary measures (which can be considered as alternatives to detention).

Detention facilities are run by the Ministry of Labour.

Alternatives to detention

In its seventh chapter, the Aliens Act entitles temporary measures as "alternative". Instead of such temporary measures, detention can be ordered. Alternatives under the law include:

1. Reporting obligation

Aliens can be ordered to report regularly to the Police if necessary

a) until it is found out whether they meet the requirements for the admission to the country;
b) in order to prepare and implement expulsion decision (departure from the country) or if it is necessary in order to control their departure from the country.

This duty is prescribed by bodies competent in situations described under letters a) and b). The obligation can stay in force until it is decided that the person meets conditions for the admission to the country or until the departure from the country can be executed.

2. Hand-over of a travel document/ticket (air plane ticket)

On the basis of the reasons stated above, aliens can be ordered to hand-over their travel document and travel tickets to the Police or the border service.

3. Provision of information on the place of residence

On the basis of the reasons listed above, it is possible to order aliens to inform the Police or the border service about their residence address where they can be contacted if needed.

4. Guarantee

Instead of the above described obligations, it is possible to order that the alien must give the State a guarantee vis-a-vis the costs related to his stay on the territory/his return. This alternative has a form of an official decision. The guarantee is returned back if reasons, on the basis of which it was required, cease to exist. Otherwise, the amount is used for the reimbursement of expenses related with the residence of the alien on the territory or with his return to the country of origin (where the guarantee amount has not been used in full, the balance is returned to the alien).

FRANCE

In France, the residence of aliens and asylum related issues are governed by the Act on the Entry and Residence of Foreigners and on Asylum (Code de l'entrèe et du sèjour des ètrangers et du droit d'asile). This Act has been adopted in 2005 and it is considered to be a codification. The previous legislation (Ordinance on Foreigners) dates back to 1945. However, the new legislation has not changed the content of the law significantly.

Detention

Detention related issues are governed by the Act on the Entry and Residence of Foreigners and on Asylum Law (Art. L.221(1) to L.224(4), Art. L.551(1) to L.555(3)). Other regulations in this field include the Decree No. 2006-617 of 30 May 2005 which governs both detention types described below (Decree of 30th May 2005 - Dècret No. 2005-617 du 30 mai 2005 relatif è la rètention administrative et aux zones d'attente).

In France, two types of dètention centres exist:

1) Detention facilities at entry points (zones deattente). These facilities are designed for foreigners who don't have sufficient documentation allowing them to enter France. The maximum length of detention in these establishments is 20 days.
2. Expulsion centres (centres de rètention administrative). The maximum length of detention in expulsion centres is 32 days. If the alien cannot be placed in such a facility right away, he can be detained in a special local establishment (locaux de rètention administrative).

As far as asylum seekers detained in the zones dèattente are concerned: these establishments accommodate undocumented aliens who applied for asylum at the borders. They are detained until it is decided whether their claim will be refused as manifestly unfounded or not (maximum of 20 days). The length of detention in the centres de rètention administrative is approximately ten days.

Aliens detained in centres de rètention administrative are entitled to apply for asylum during the first five days of their detention. Their claim will then be assessed within 96 hours. The aliens must stay in the detention until the decision is made.

The establishment and administration of detention centres vary according to the type of the facility. Zones dèattente are established by the decision of a local official (prèfet) at international airports, international sea-ports and railway stations. The zones dèattente are administered by the Border Police (police aux frontières).

Centres de rètention administrative are established on the basis of a decision of the Ministry of Interior, Justice, Defence and Social Affairs. They are supervised by prèfet and administered by the Police (police nationale and gendarmerie).

There are many detention centres in France. The number of establishments of the zones dèattente type exceeds one hundred; however, the most important one is located at Roissu at the Charles de Gaulle airport where about 90% of asylum claims submitted at the borders are registered. The number of establishments of the centre de rètention type is 23 and there are also over hundred locaux de rètention. As locaux de rètention can be considered also Police premises or hotel rooms. Other establishments are under construction and by June 2008, the overall capacity should reach 2,700 rooms. There is also a plan to ensure a more balanced distribution of the establishments over the country. Even though the standards of these facilities have been specified by the Decree of 30 May 2006, many establishments still fail to meet them.

Detention decision

Zones dèattente: Detention for the initial four days is decided about by the Border Police. Two extensions by further eight days can be made by a civic judge (juge des libertès et de la dètention, 4+8+8=20 days).

Centres de rètention: Decision on the detention for first two days is made by the prèfet. Extension of the detention period for further 15 days falls under the competence of a civic judge (juge des libertès et de la dètention), as well as potential subsequent extension by further 15 days (2+15+15=32).

Reasons for detention

According to the legislation, aliens without necessary documentation enabling them to enter the French territory can be detained for a period necessary to ensure their return to the country of origin or, if they applied for asylum, for the period necessary to determine whether their claim should be rejected as manifestly unfounded.

Detention can be used also where aliens have been issued the so-called expulsion order. Three types of expulsion orders exist:

1) Decision of the prefecture on transportation to the borders and obligation to leave the French territory for aliens not entitled to further reside on the French territory (arrètè prèfectoral de reconduite è la frontière et obligation de quitter le territoire français);
2) Decision of the prefecture or the Ministry on expulsion of aliens constituting a danger for the public order (arrètè prèfectoral ou ministèriel dèexpulsion);
3) Prohibition of stay on the French territory for aliens sentenced for committing a criminal offence (interdiction du territoire français).

Also Dublin cases can be detained in order to enable the handover of the individual concerned to the State responsible for the examination of his claim.

Review of detention

As already indicated: detention is regularly reviewed by the court - in zones dèattente after four days, in centres de rètention after two days. The judge must determine whether the return to the applicant's country of origin can be executed during the time of detention, whether the Police do all steps necessary in order to implement the expulsion and if the apprehension prior to the detention was lawful. The judge does not decide on the well-founded nature of asylum claims, nor does he assess the lawfulness of the expulsion decision. Similar review takes place also in cases of asylum seekers.

Asylum procedure

For asylum claims submitted at the borders or in the zones dèattente, the first examination focuses on whether conditions for rejecting the claim as manifestly unfounded are met or not. No deadline for the submission of asylum applications exists. If a claim is rejected as manifestly unfounded, the applicant may appeal to the administrative court. This remedy is not used very much as it does not have a suspensive effect. If the claim is not rejected as manifestly unfounded, the asylum seeker is allowed access to the territory. Within eight days after his release, the alien must submit an asylum claim at the prefecture; then the standard asylum procedure under the Foreign Ministry starts. Asylum cases are also commented on by OFPRA (French agency for the protection of refugees and stateless persons).

In centres de rètention, the asylum procedure is carried out by OFPRA; asylum applications must be submitted within five days and are examined under special accelerated procedure as it is expected that these claims have been submitted with the intention to prevent or delay expulsion.

There are certain differences between the course of the asylum procedure in and outside the detention. The most important difference is that in zones dèattente, claims are examined as manifestly unfounded. This sort of admissibility procedure does not exist under the standard asylum procedure. Also, asylum centres in zones dèattente are run by the Interior Ministry while the asylum procedure on the territory falls under the competence of the Ministry of Foreign Affairs.

The deadline for the submission of asylum applications outside detention centres is 21 days after the admission to the French territory.

In zones dèattente, subsequent admission to the territory has been allowed to 22.2% of the applicants, in centres de rètention this number was 2%.

Alternatives to detention

Where aliens are detained for the purpose of expulsion, the court (juge des libertès et de la dètention) can decide on the application of the alternative ordering the alien to reside at a specific address. The alien must provide trustworthy guarantees that he will comply with the issued expulsion order. He must also hand-over his passport and report to the Police on daily basis. However, this alternative (which obviously is a combination of several alternative measures) is used very seldom (in approximately 5% of the cases).

GERMANY

In Germany, unlike many other countries, the right of asylum is not only anchored in the 1951 Geneva Convention on Refugees, it is also enshrined in the constitution as a fundamental right, the Basic Law, and persons can sue for this right in a court of law. The high priority given the right of asylum in Germany is above all due to the painful experience during the Nazi regime, when many Germans faced persecution at home and were dependent on protection offered by other countries. This led to a strong desire to assume special responsibility for those seeking protection and refuge from political persecution[12].

The Immigration Act[13] went into force on 1 January 2005. The Immigration Act for the first time provides a legislative framework for controlling and restricting immigration as a whole. The Immigration Act is made up of the Residence Act (AufenthG), the Act on the General Freedom of Movement for EU Citizens (Freedom of Movement Act/EU) and amendments to additional legislation.

Asylum procedure

Foreigners claiming the right of asylum must submit their claims in accordance with the procedures specified in the Asylum Procedure Act. Using the nation-wide system for initial distribution known as EASY, asylum seekers are assigned to the initial reception centres of the individual German states (Lander). The Federal Office for Migration and Refugees (BAMF), which lies within the remit of the Federal Ministry of the Interior, is responsible for processing all asylum claims. Formerly known as the Federal Office for the Recognition of Foreign Refugees, the BAMF has its headquarters in Nuremberg and a branch office in each state so that claims may be processed as closely as possible to the reception centres, which are operated by the German states.

Detention during accelerated procedures at the airport

Asylum applicants arriving at one of the major German airports and coming from 'safe countries of origin' or without valid passports are subject to a special accelerated asylum procedure conducted at the airport (the 'airport procedure'). An applicant may be held in facilities at the transit zone of the airport until he or she is granted entry or his or her application for asylum is rejected as 'manifestly unfounded'. According to a decision of the German Constitutional Court, the holding of asylum-seekers in closed facilities in the transit zone during the airport procedure does not amount to either detention or a limitation of liberty, since the individuals were free at any time to leave for the country they came from or another destination. The time limit for the airport procedure is 19 days.

Applicants whose claims are rejected as 'manifestly unfounded' and who cannot return to their countries of origin may spend several months in de facto detention at the airport. The Regional Civil Court Frankfurt (the court of second instance competent for detention matters with respect to the Frankfurt airport), ruled on 5 November 1996, however, that as soon as an asylum application has been rejected and the removal order enforced, any obligation of the concerned asylum-seeker to remain in the transit zone without prior order by the responsible judge would violate his/her right to liberty. This decision corresponds to the Amuur v. France decision by the European Court on Human Rights. The incidence and duration of such long-term stays have significantly decreased in recent years.

Rejected claims may be appealed in administrative court; no preliminary proceedings are conducted. About 80% of those whose asylum claims have been rejected make use of this possibility. Rejected asylum seekers are in principle obligated to leave the country; if they refuse to do so, they may be deported, i.e. forcibly removed, as long as there are no obstacles to deportation[14].

Even if the necessary conditions for granting asylum or refugee status under the Geneva Convention are not met, humanitarian considerations may prevent a foreigner from being deported, even though he or she has no right of residence (subsidiary protection). A foreigner cannot be deported if he or she faces a concrete threat of torture, capital punishment or other inhuman or degrading treatment or threat to his or her existence in his or her home country. Temporary residence permits may be issued for as long as the grounds for the deportation ban remain valid. However, no one who has committed a serious violation of the obligation to cooperate or who poses a serious threat may be issued a residence permit; the same applies if it is possible and reasonable for the foreigner to go to another country[15].

Detention

In Germany, as a rule, asylum seekers are not subject to detention during asylum procedures.

Detention under the Immigration Act - Custody awaiting deportation (Section 62)

1. Preparatory detention.
   A foreigner shall be placed in custody by judicial order to enable the preparation of deportation, if a decision on deportation cannot be reached immediately and deportation would be complicated substantially or frustrated without such detainment (custody to prepare deportation). The duration of custody to prepare deportation should not exceed six weeks. In case of expulsion, no new judicial order shall be required for the continuation of custody up to expiry of the ordered term of custody.
2. Security detention
   A foreigner shall be placed in custody by judicial order for the purpose of safeguarding deportation (detention pending deportation) if the foreigner is unappealably obliged to leave the Federal territory on account of his or her having entered the territory unlawfully, if a deportation order has been issued pursuant to Section 58a but is not immediately enforceable, if the period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached, moreover, if he or she has failed to appear at the location stipulated by the foreigners authority on a date fixed for deportation, for reasons for which he or she is responsible, or he or she has evaded deportation by any other means or a well-founded suspicion exists that he or she intends to evade deportation.

The foreigner may be placed in detention pending deportation for a maximum of two weeks, if the period allowed for departure has expired and it has been established that deportation can be enforced. By way of exception, the order for detention pending deportation pursuant to sentence 1, no. 1 may be waived if the foreigner credibly asserts that he or she does not intend to evade deportation. Detention pending deportation shall not be permissible if it is established that it will not be possible to carry out deportation within the next three months for reasons for which the foreigner is not responsible.

Detention pending deportation may be ordered for up to six months. In cases in which the foreigner frustrates his or her deportation, it may be extended by a maximum of twelve months. A period of custody to prepare deportation shall count towards the overall duration of detention pending deportation.

Remedies and judicial review

The imposition of pre-deportation detention must be determined by the local civil or criminal courts on request of the aliens' authorities, within 24 hours. The alien concerned can appeal against such an order to the District Court within two weeks, and thereafter to the Regional Court, within a further two weeks.

Rejected asylum seekers in pre-deportation detention are generally subject to normal prison regimes. No specific rules, rights and duties of these detainees have yet been fixed into formal law.

In principle, the detainees may contact lawyers, UNHCR or NGOs, but in practice access is unsatisfactory and there is a severe shortage of professional counselling. Many detainees complain that they do not know how their cases are proceeding or what will happen to them. Courts grant legal aid only after a strict merits test. Further, many lawyers are reluctant to represent pre-deportation cases because such cases are very time-consuming if they are to be handled successfully and most detainees are not in a position to pay for a lawyer. Instead of detaining rejected asylum seekers in regular prisons, some federal states have established special detention centres for aliens pending deportation.

Alternatives to detention

Departure facilities (Section 61)

The Lander (federal countries) may establish departure facilities for foreigners who are unappealably obliged to leave the Federal territory. At such departure facilities, the willingness to leave the Federal territory voluntarily should be promoted through support and counselling and accessibility for authorities and courts and implementation of the departure procedure should be ensured.

The stay of a foreigner who is unappealably obliged to leave the Federal territory shall be restricted in geographic terms to the territory of the Land concerned. Further conditions and requirements may be imposed.

Obligations relating to identification papers, prohibition of departure

On request, a foreigner shall be obliged to present and surrender his or her passport, passport substitute or substitute identity document and his or her residence title or a document confirming suspension of deportation to the authorities entrusted with implementing this Act and to leave such documents with the said authorities for a temporary period, insofar as this is necessary in order to implement or safeguard measures in accordance with this Act.

Obligations of asylum seekers

As already pointed out, asylum applicants and refugees in Germany are seldom subject to detention. In order to ensure compliance during the asylum procedure and availability for removal, as well as a means of cost reduction and national 'responsibility sharing', they are, however, subject to certain restrictions regarding settlement and freedom of movement. For the duration of the asylum procedure, applicants are subject to restrictions on their freedom of movement. They are generally not supposed to travel outside their district of assigned residence without special permission from the competent local aliens' authority. Should they breach this requirement, they may be subject to detention as a penalty. Some districts are no larger than fifteen square kilometres. No such permission is required for the purpose of appearing in court or before other authorities. It is regularly granted to allow an applicant to seek advice from a lawyer or an NGO if such advice is not available within the assigned district. Permission to visit family members residing in other federal states is granted on a very restrictive basis only[16].

GREECE[17]

Greece's geographical location on the south-eastern border of the European Union has made it a first-stop destination for refugees fleeing persecution and seeking protection in the EU, as well as migrants. Most undocumented aliens are detained and held in detention centres for the maximum period of three months. The strong pressure of fugitives and migrants revealed many gaps in the legislation leading to numerous violations of the right to apply for asylum under the international refugee law. Greek authorities do not enable illegal migrants' access to the asylum procedure after they enter the country.

Most asylum seekers arrive to Greece on land. It is mainly the Greek-Turkish borders at the Evros River that are very busy in this context. Other transportation modes include small ships trying to reach small Greek islands in the Aegean Sea. Asylum applications are submitted upon arrival to the country to the border authorities.

Asylum issues are governed by the provisions of the 2001 Aliens Act and by the Presidential Decree No. 61/99 on the asylum procedure.

Asylum procedure

If an asylum seeker arrives at a port or an airport without the proper documents to enter the territory and files an application for asylum, the application should be considered on the same day. All applications filed at ports and airports are examined within the accelerated procedure. Applications filed within the country can also be channelled through the accelerated procedure if, after the first interview, the interviewer is of the opinion that the claim is 'manifestly unfounded'. An application can be declared as 'manifestly unfounded', inter alias, due to following reasons: i) the reason for the application does not fall within 1951 Convention; ii) the asylum seeker has used false identity documents, given false information, or is considered to have 'abused' the procedure in other ways; iii) the asylum seeker originates from a 'safe country of origin'.

Decision on asylum is issued by the Police and Security Department of the Public Order Ministry; recommendation is provided also by the Division of the State Security of the MPO.

If the application is rejected, the applicant has the right to lodge an appeal to the Secretary General of the MPO. The Secretary General's decision is based on the advice of the appeals board consisting of officials from the MPO, the

Ministry of Foreign Affairs, a representative of the Athens Bar Association and a representative of UNHCR. However, the appeals board is a consultative body, its recommendations thus do not have any binding effect. The appeal has suspensive effect.

If the asylum claim is examined under the standard procedure, then the decision is made by the Secretary General of the Public Order Ministry. Again, the Division of the State Security will provide its comments on the case. Negative decisions can be appealed against to the Ministry of Public Order (recommendation is again issued by the appeal board).

The Greek system has been often criticized for the non-existence of an independent appeal body. Appeals are processed by the Ministry, the appeal board issues only recommendations which are not binding.

Detention[18]

If, according to the general circumstances, it is suspected that the alien may escape or he is considered dangerous to public order, the authorities may order his temporary detention until the issuance, within three days, of a deportation decision. Following the issuance of the deportation decision, the detention continues until its execution but it cannot exceed the period of three months. The alien shall be informed about the reasons of his detention in a language he understands. A detainee shall be entitled to present his objections to the detention decision before the president of the first instance administrative court of the region where he is detained. If it is not suspected that the alien may escape, if he is not considered dangerous to public order or if the president of the first instance administrative court disagrees with his detention, the decision shall set out a time limit fro departure from the country, which may not exceed thirty days.

The alien has a right to appeal against the deportation decision (within five days from its submission) to the Secretary General of the local region, who shall make a decision within three days from the submission of the appeal. The appeal submission has a suspensive effect on the implementation of the expulsion.

According to the libcom.org server (http://libcom.org/news/article.php/greece-immigrant-detention-camps-270506), the expulsion usually takes the form of illegal deportation. At the marine borders, the Police units "push" boats back to Turkey; in the Evros area people are detained for one or two days and then sent back to Turkey by boat without any identification.

Alternatives to detention

No alternatives to detention exist.

IRELAND

Domestic legislation governing asylum and immigration issues is the 1996 Refugee Act, the Immigration Act of 1999, 2003 and 2004 and the 2000 Illegal Immigrants Trafficking Act.

Asylum procedure

The Act provides that persons arriving at the borders of the state seeking asylum are initially dealt with by an Immigration Officer. The purpose of this interview, is to establish inter alias: whether the person wishes to make an application for a declaration for refugee status and, if so, the general grounds upon which the application is based, the identity of the person and their nationality, transport and route taken to reach Ireland as well as the legal basis for entry into or presence in the State. The applicant is then given a detailed questionnaire, which requires him or her to provide biographical and other personal details, travel particulars and, most importantly, the reasons for seeking asylum. This questionnaire must be handed to ORAC (see below).

In the first instance, applications are examined by the Office of the Refugee Applications Commissioner, ORAC) who will conduct an interview and issue his recommendation in the case. If the recommendation is negative, the applicant has a possibility to appeal to the Refugee Appeals Tribunal. Final decision is issued on the basis of the Office recommendation or later on the basis of the recommendation of the Tribunal by the Ministry of Justice.

If ORAC recommends that asylum should be granted, it will inform the Ministry of Justice of its decision; the Ministry is fully bound by this recommendation (with the exception of State security and public policy issues). Further

information can be found at the Commissioner web site (http://www.orac.ie/indexblue.htm).

Detention

In Ireland, several types of detention exist. They are distinguished according to who orders the detention and according to its length. The detention types can be generally described as follows:

1. If Section 9(8), letter (a) to (f) of the Refugee Act is applied, then the detention decision is made by a district court judge and the length of detention must not exceed 21 days;
2. If Section 4(3), letter (a) to (k) of the Immigration Act applies, then the person can be detained for a period necessary for his expulsion from the country (maximum of eight weeks);
3. Under Section 9(8) or (13) of the Refugee Act, asylum seekers can be detained on the basis of the district court judge decision for an unspecified period not exceeding 21 days pending the decision on his asylum claim;
4. The detention of aliens for the purpose of expulsion under Section 5 of the Immigration Act cannot exceed five weeks.

Pursuant to Section 9(8), an immigration officer or a member of the Garda Síochána (i.e. the Police) may with a reasonable course detain a person over 18 years of age if he

a) poses a threat to national security or public order in the State,
b) has committed a serious non-political crime outside the State,
c) has not made reasonable efforts to establish his or her true identity,
d) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a Dublin convention country,
e) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

The web site of the Irish branch of the Amnesty International mentions that under the Refugee Act the following groups of asylum seekers can also be detained[19]:

a) applicants who attempted to leave the country;
b) applicants who did not inform relevant authorities about the change of their address;
c) applicants who did not observe their duty to reside at a specific place or to report to the Immigration Office regularly;
d) applicants who work or are involved in business activities.

Reasons for detention and categories of persons who can be detained

For immigration related purposes, it is possible to detain the following persons:

a) Aliens who did not get entry permit; foreigners travelling to Ireland by plane or boat (Ireland is an island) are obliged to report to the immigration officer and ask for entry permission. The immigration officer can refuse to issue entry permit for reasons specified in Section 4(3), letter (a) to (k).
b) Asylum seekers: Section 9(8) of the Refugee Act sets out examples of situations in which immigration officers or members of the Garda Síochána may decide to detain asylum seekers. These include the following situations:

- the applicant poses a threat to the national security or public order;
- the applicant has committed a serious non-political crime;
- the applicant as not made reasonable efforts to establish his true identity;
- the applicant intends to avoid removal from the State;
- the applicant intends to leave the State and enter another state without lawful authority;
- without reasonable cause the applicant has destroyed his identity or travel documents or is in possession of forged identity documents.

c) Aliens who are due to be deported from the state. The legal authority to detain persons subject to deportation order is set out in section 3(1A) and 5(1) of the 1999 Immigration Act.
d) Aliens who are on remand (awaiting trial) for an immigration-related offence.

Detention is subjected to judicial review.

Alternatives to detention

The Irish legislation provides for standard alternatives to detention. An immigration officer can order aliens to reside or live in specific areas/districts (in writing) or to report regularly to the immigration officer/Garda Síochána (the Police) member. The alien must observe these obligations.

ITALY

Italy's geographical position makes the country one of the principal maritime entry points into the European Union for migrants and asylum seekers from more and more distant countries[20]. Recently, Italy and its asylum policy on the reception of asylum seekers (especially at the island of Lampedusa considered to be the entry gate to Europe) has become the subject of debates and discussions (similarly to the situation at the Canary Islands and Spanish enclaves of Ceuta and Mellila). One of the main channels of entry into Italy for refugees is Southern Italy. Currently, the Island of Lampedusa is an especially important gateway. In summer, boats full of people arrive primarily from Libya; in many cases the boats are full of asylum seekers (Libya has been a terminal for many immigrants from Sub-Saharan African and the Middle East for many years now). The European Court for Human Rights in Strasbourg has received to the main proceeding the complaint of 83 refugees detained in Italy without having their asylum claims examined and forcibly expelled to Libya later on (Libya then sent them further on to their, often dangerous, countries of origin). The refugees have lodged a complaint against Italy claiming that Article 3 of the ECHR (prohibition of torture and inhuman treatment), Article 4 of the Protocol No. 4 to the Convention (prohibition of mass expulsion) and Article 34 of the Convention (right to individual complaint) have been violated in their case. The complaints are registered under the title Hussun and others (10171/05), Mohamed and others (10601/05), Salem and others (11593/05) and Midawi (17165/05).

In 2004, 12,737 illegal immigrants arriving in 231 boats landed on Lampedusa Island. Close to 2,000 would-be migrants died during the attempted sea crossing. From October 2004 onwards, Italy has reversed its policy towards these arrivals. Initially Italy permitted access to the asylum procedure to all asylum seekers just after being brought ashore on Lampedusa. In the last period Italy began a policy of collective expulsion. In fact, during the period from October 2004 to March 2005 several hundred migrants were deported by Italy to Libya. On arrival, migrants are detained in a closed camp for 48 hours and then transferred either to "identification centres" (if they are qualified as asylum seekers) or to CPTs (centri di permanenza temporanea; if they are served with an expulsion order). State authorities have restricted the admission and access of NGOs, UNHCR and lawyers to the camps. In March 2005, where 180 people were returned from Lampedusa to Libya, an appeal was lodged to the European Court of Human Rights. The Court asked the Italian authorities to provide evidence on how these cases were being treated. Later, on the basis of the explanations provided, the Court demanded that Italy provide greater transparency on the issue and stop the collective expulsion of foreigners to Libya.

Most recent information can be found at web pages of NGOs and at the UNHCR web site[21].

As far as the relevant legislation is concerned, the new Law 189 of 30 July 2002 amending the previous Immigration and Asylum Law, entered into force in September 2002. The main purpose of this law is to introduce regulations combating illegal immigration and the abuse of the asylum system, pending the adoption of legislation on the basis of the future European harmonisation programme. It also introduces substantial changes to the asylum procedure, with the risk of dramatically reducing the possibility of seeking and obtaining protection in Italy.

The asylum procedure

Under the previous legislation, only the Eligibility Commission (Commissione Centrale per il riconoscimento dello status di rifugiato) in Rome could examine asylum requests submitted on the Italian territory. This Commission, now called "National Commission", co-ordinates seven Territorial Eligibility Commissions (Foggia, Milano, Roma, Crotone, Gorizia, Siracusa, Trapani) which are the only bodies entitled to take first instance decisions. The National Commission takes decisions revoking refugee status. The so-called "commissione stralcio", an ad hoc Eligibility Commission, was established to examine approximately 20,000 pending asylum claims filed before 21 April 2005. The seven Territorial

Eligibility Commissions examine all asylum claims under both standard ordinary and accelerated procedures[22].

The standard procedure: within two days of the asylum application submission, the application is forwarded to the authority responsible for determining status (the Territorial Commission, see below), which must process the application within thirty days. The law, however, stipulates that asylum seekers – unless they fall within categories of aliens detained pending the investigation of their application (see above) – are given temporary residence permit for three months (renewable until the outcome of the procedure). The Commission gives issues the decision in writing and includes also justification for the decision; this is done within three days of the hearing. Where the decision is negative, the applicant is issued deportation order. The decision of the Commission may be appealed to a standard court within fifteen days. The appeal, which may be made from abroad through diplomatic representations, does not have a suspensive effect.

However, the asylum seeker may, in well-founded cases, seek authorisation from the prefetto to stay in the country until the outcome of the appeal.

The accelerated procedure: applies to two categories of applicants - those who have filed their application after being arrested for entering or illegally attempting to enter or for violating regulations, and those who at the time of the submission of their claim, had already been issued expulsion or refoulement order. In the first case, applicants are placed in an identification centre (CDI) as soon as their application is received. Their claim is forwarded within two days to the relevant Territorial Commission which will assess the application in fifteen days and give its decision within three days of the hearing. Remedies against the Commission's decision are the same as under the standard procedure. If, at the end of the stipulated period for the accelerated procedure (twenty days), the Territorial Commission has not reached a decision, the applicant leaves the CDI and is granted residence permit for three months (this permit can be renewed until the final decision is made). If the decision is negative, expulsion order is issued. In cases of aliens seeking asylum after being issued deportation order, the applicants are placed in a temporary detention centre (CPTA). The next procedure is the same, although the aliens can be kept in detention only for up to sixty days pending the decision[23].

The Territorial Commission can take three different decisions in both procedures: to grant refugee status, to reject refugee status or to grant subsidiary protection.

In case of a negative decision, asylum applicants may lodge an appeal before the so-called "Integrated Commission" composed of the Territorial Commission plus one member from the National Commission.

Judicial appeals can be lodged before the civil tribunals and do not have suspensive effect. Appeals can be also submitted abroad at Italian Embassies.

Detention

According to Article 1 of the Act 39/90, amended by Act 189/2002, asylum seekers can be placed in "compulsory detention" or "optional detention".

Compulsory detention

Those asylum seekers who have avoided or tried to avoid police controls or who stay illegally on the Italian territory are kept in so-called "identification centres" for the maximum of 20 days. Asylum seekers who have been previously issued expulsion or rejection order (at the border) are held in CPT (centri di permanenza temporanea, a kind of detention centre for non-nationals awaiting deportation) for a maximum of 60 days. The so-called "accelerated procedure" applies to all asylum seekers kept under compulsory detention.

Optional detention

The following groups of asylum seekers can be kept in optional detention in so-called "identification centres":

- asylum seekers without valid identification and/or travel documents or with false documents;
- asylum seekers awaiting decision on their admission to the Italian territory.

The standard procedure is used for the examination of asylum claims submitted by asylum seekers kept in "optional detention" and to those who have entered or lived in Italy regularly.

In 2004, as in 2003, the vast majority of asylum seekers who arrived by boat in Sicily, particularly to Lampedusa Island, were transferred to other towns and kept in closed camps for approximately 20 days and released after being identified and registered as asylum seekers. Others were obliged to remain in the camps longer while the Eligibility Commission carried out interviews locally instead of in their offices in Rome. In these cases, freedom of movement was restricted to the camps boundaries. Those issued negative decision were ordered to leave the country within 15 days.

Reasons and conditions for detention

Asylum seekers can be detained for the following reasons:

1. in order to determine their identity;
2. if they applied for refugee status after avoiding or trying to avoid the border police;
3. if they applied for refugee status after receiving a deportation orders.

Asylum seekers are detained in identification centres (in case of the first two reasons) or in temporary holding centres (third reason). There are some centres which accommodate asylum seekers detained for any of these reasons. There are 16 detention centres in Italy and their administration is governed by the Directive of the Ministry of Home Affairs.

Alternatives to detention

No information are available, no alternatives seem to exist. No alternatives are included even in the UNHCR Handbook by Ophelia Field.

LUXEMBOURG

Luxembourg has its own asylum and aliens legislation. The asylum procedure is governed by new the Asylum Act adopted on 5 May 2006 and issues related to the residence of aliens by the 1972 Immigration Act. The new Asylum Act makes the asylum procedure faster and implements the relevant EU regulations. There is only one provision which refers to the detention of aliens. There are no special regulations on the detention of asylum seekers. As far as detention centres are concerned, Luxembourg has no special facilities of this kind: detained foreigners are placed in special parts of standard prisons. Next year, the government plans to build a special detention establishment. The administration falls under the competence of the Prison Services; another relevant authority in this field is the Ministry of Integration. Detained asylum seekers are placed together with other detained aliens. Detention at the airport is also possible (Dublin cases and families are placed there before the departure).

As far as reasons for detention are concerned, aliens can be detained in order to ascertain their identity, to ensure public order and security. Dublin cases can also be detained. The general reason for detention is to enable the departure of persons residing illegally in Luxembourg (Schengen area) and the return (expulsion) of rejected asylum seekers.

The asylum procedure falls under the competence of the Integration Ministry. Asylum applications can also be submitted in detention centres. No special limits or deadlines apply for their processing there.

As Luxembourg is not located at external EU borders and lies within the Schengen territory, only asylum claims submitted at airports can be taken into account. Aliens indicating their intention to apply for asylum are transferred to reception centres for refugees where further procedures take place.

If the result of the asylum procedure is negative, the applicant can appeal to the administrative court. If the court rejects the appeal, the last option is to ask for review the Appeal Administrative Court whose decision is final.

Alternatives to detention

Luxembourg has no system of alternatives to detention. Asylum seekers must report regularly (approximately once a month) in order to have the validity of their documents and residence permit extended. They also must report

regularly in order to receive financial support. As in other countries, asylum seekers must hand over their travel document in order to prevent their potential movements.

PORTUGAL

The applicable legislation in the area of asylum and immigration issues is the Act No. 15/98 of March 26 - New legal framework in matters regarding asylum and refugees.

Asylum procedure

Aliens or stateless persons who enter the national territory with the purpose of obtaining asylum shall submit their application to any police authority within eight days, either verbally or in writing. If the applicant is a resident in the country, such time shall run from the date when the facts based on which the request is made occurred, or came to the petitioner's knowledge.

The petition is admitted in case, through the proceedings prescribed in the present Law, some of the causes mentioned on Article 3 1 or on the below items are immediately found to be obvious:

a) To be groundless, because it is obvious that it does not meet any of the criteria defined by the Geneva Convention or by the New York Protocol, because the allegations that the applicant fears persecution in his or her country have no reason to be, or because it constitutes an abusive usage of the asylum process;
b) To be made by petitioner that is national or habitual resident in a country likely to be considered as a safe country or as a third host country;
c) To comprise within the situations mentioned in Article 1-F, of the Geneva Convention;
d) The application is submitted, without due justification, beyond the deadline prescribed;
e) The applicant had been decided to be expelled from national territory.

After a summary fact-finding process, the Director of the Aliens and Frontier Department shall be competent to issue a grounded decision refusing or admitting the petition, within 20 days, after which the petition shall be considered as admitted, if no decision has been issued.

This decision shall be immediately communicated to the representative of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees.

Reappraisal and appeal

In case the petitioner does not agree with the reached decision, he or she can, within five days from the date of notification, request its reappraisal, with suspensive effect, by means of a petition addressed to the national commissioner for the Refugees, who may interview the petitioner personally, if he finds it necessary. Within forty eight hours from receiving the reappraisal petition or interviewing the petitioner, the national commissioner for the Refugees shall take his final decision, which can be appealed before the Administrative Court of first jurisdiction (Tribunal Administrativo de Círculo), within eight days.

Within 20 days, an appeal against the refusal of the asylum petition can be lodged at the Supreme Administrative Court, with suspensive effect.

Subsection: Requests made at Frontier Office - Special regime

The admissibility of asylum applications made at Frontier Offices by aliens who do not fulfil the necessary requisites to be admitted into national territory shall be subject to the regime prescribed in the previous Articles, with the changes emerging from the present Subsection.

The Aliens and Frontier Department shall immediately communicate the submission of the asylum requests to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees; these entities can express their opinion within no more than forty eight hours, and interview the petitioner, if they wish so. Within the time limit, the petitioner shall be informed of his or her rights and duties, and shall render statements which shall be considered, for all due purposes, as previous hearing of the interested. The

Director of the Aliens and Frontier Department shall issue a grounded decision accepting or refusing the request within no more than five days, but never before expiring the time limit set above. The decision mentioned in the above paragraph shall be notified to the petitioner, with information regarding his or her rights to appeal and, simultaneously, communicated to the representative of the Office of the United Nations High Commissioner for the Refugees and to the Portuguese Council for the Refugees.

Reappraisal

Within twenty four hours after being notified of the decision, the petitioner can apply for its supersedes reappraisal, by means of a request submitted before the national commissioner for the Refugees, who shall take his final decision within twenty four hours. Both the representative of the Office of the United Nations High Commissioner for the Refugees or of the Portuguese Council for the Refugees can, if they wish so, express their written opinion about the decision of the Director of the Aliens and Frontier Department, within twenty four hours after the communication of that decision.

According to point 1 of article[24] of the Asylum Law "an appeal against the refusal of the asylum petition can be lodged at the Administrative Supreme Court, with suspensive effect".

However, the Administrative Supreme Court declared it was not competent to decide these cases. At the present time (report 2004), both types of judicial asylum appeals provided for in Asylum Law (appeal of a decision on admissibility taken by the National Commissioner for Refugees and appeal of a rejection of an asylum petition taken by the Ministry of Interior) are directed to the same first instance court, the Administrative and Fiscal Court (Tribunal Administrativo e Fiscal). Suspensive effect only applies in the latter type of appeal.

The current administrative procedure law ignores the "hierarchy" that the asylum law aims to establish for different types of appeal: The appeal of a decision on admissibility taken by the National Commissioner for Refugees should be directed to a first instance administrative court (number 2, of article 16); and The appeal of a rejection of an asylum petition taken by the Ministry of Interior should be directed to a second instance court (number 1, of article 24);

In our opinion this "hierarchy" is meant to emphasize the different type of case (non-admissibility decision / rejection of asylum claim) and the different entities involved in the decision making process (National Commissioner for Refugees / Ministry of Interior).

Effects of Courts Decisions

One of the major improvements is that administrative courts can now analyse both the formal aspects and the merits of a case (before only formal aspects could be analysed).

Also, the effect of a court decision is much more profound as the administration must comply with what the court decision determines. In the past, if the administrative court decided on behalf of the previously rejected asylum applicant this only meant that the administration should look at the case again. It is still premature to assess whether the changes in the administrative procedure will have a positive or negative impact on asylum law. However, the Portuguese Refugee Council believes that Portuguese administrative judges have very little knowledge or understanding of asylum principles.

Detention

Asylum seekers are not detained in Portugal. The only detention-like situation arises under the special regime of asylum requests made at the borders. The Aliens and Border Service, under the Ministry of Home Affairs, has the authority to detain asylum seekers arriving at ports of entry.

In such cases, asylum seekers must remain in the "international area of the airport or seaport" while they await a decision on the admissibility of their claim, which is taken by the General Director of the Aliens and Borders Service or, on appeal, by the National Commissioner for Refugees. During their stay at border points, asylum seekers are detained (they cannot enter Portuguese territory) until:

- a positive decision on the admissibility of their claim is taken, which allows them to enter the national territory;
- the deadlines for the referred decision are not respected, which allows them to enter the national territory; or

- a final negative decision on the admissibility of their claim is taken and they have to return to the point where their journey began[25].

Duration of detention anticipated in the national law is 5 - 60 days.

Asylum seekers arriving at the Lisbon airport are detained in the transit zone for 48 hours to 5 days while an initial decision is made on admissibility. If a decision on admissibility is not made within five days, asylum seekers held at the airport must be released and allowed to enter the territory.

Detention of rejected asylum seekers awaiting deportation is limited to 60 days.

Asylum seekers are not typically detained during the asylum determination process. The Asylum Act, as of 2001, provides for suspension of criminal or administrative procedures based on illegal entry when the person subject to such proceedings files an application for asylum. If detention is due to rejected asylum seekers' failure to depart, then there is criminal court judicial review of detention within 48 hours of initial detention.

Despite the fact that all rejected asylum seekers are notified by national authorities that they should leave the country within 20 days, Portugal does not practice a systematic policy of deportation of rejected asylum seekers. The only exception occurs where asylum requests are presented at border points, namely at airports. According to a special procedure, when a final negative decision on admissibility of a claim is taken, the asylum seeker has to return to the point where his/her journey began. This is easy to accomplish when an asylum seeker is staying in an international area of the airport.

Judicial review

Asylum seekers detained at the airport do not have independent review of their detention, which is subject to time limits. There is no periodic review of detention.

Alternatives to detention

Portugal does not practice detention of asylum-seekers. The only detention-like situation occurs with the requests of asylum presented at border points, situation above. As measure of control, and according to article 11, paragraph 4 of Asylum Act, the asylum seeker has the obligation to keep the Aliens and Borders Service informed about current address, as well as the obligation to be present at the same entity every 15 days "otherwise the procedure shall not follow their normal course before the actual situation of the interested person is clarified."

SPAIN

The relevant legislation in this field is the Royal Decree 2393/2004, 30th December, by which is passed the Regulation of the Organic Law No. 4/2000 of 11 January 2000, on Rights and Freedoms of Foreigners in Spain and their Social Integration (the Aliens Act), "REAL DECRETO 2393/2004, de 30 de diciembre, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social".

National Legislative framework on asylum seekers

There was no new asylum legislation passed along 2005 although it was in February 2005 when entered into forced the Royal Decree 203/2003 of Asylum Regulation approved by Royal Decree No. 203/1995 that was modified by several dispositions within the Royal Decree 2393/2004 of 30th December, which is an enlargement of the Organic Law No. 4/2000 of 11 January, (reformed by Organic Law 8/2000) on Rights and Freedoms of Foreigners in Spain and their Social Integration.

Asylum procedure[26]

Entry into the territory

Every alien is entitled to apply for asylum in Spain upon arrival or at any time during his/her stay in the country.

Those persons seeking asylum will not be returned or expelled until a final administrative decision has been taken on their claim, and those who attempt to enter Spanish territory unlawfully with the purpose of seeking asylum cannot be punished for it.

However, asylum seekers who enter the country illegally are requested to submit their applications within one month of entry. Those who entered legally must submit their applications within the time of their allowed stay. An asylum application lodged beyond the prescribed time limit may be rejected as inadmissible in accordance with Section 7(2) of the Asylum Regulation. However, late applicants may combat this presumption by providing a reasonable explanation for not having met the deadline.

Normal determination procedure

Applications deemed admissible are processed under the ordinary refugee status determination procedure and the applicant is given a provisional identity card.

The procedure starts with an investigation of the merits of each case by the OAR (Asylum and Refugee Office ("Oficina de Asilo y Refugio"), which is responsible for processing all asylum claims submitted in Spain. The file is then forwarded to the Inter-Ministerial Commission on Asylum and Refugees ("Comisión Interministerial de Asilo y Refugio" – CIAR), which has the task of drawing up a recommendation for the first instance decision, which is then submitted to the Ministry of Interior for its ruling. The CIAR comprises a representative from the Ministry of Interior (who chairs the Commission), the Ministry for Foreign Affairs, the Ministry of Justice and the Ministry for Labour and Social Affairs. The UNHCR representative in Spain acts as a member of the CIAR in a consultative capacity. The CIAR makes its recommendation on the basis of the information and evidence produced by the applicant, the OAR's report, and the opinions and legal reports of UNHCR and refugee-assisting NGOs. The procedure is written and no hearing is stipulated by the Asylum Act. The CIAR may decide to return the case to the OAR for further investigation, specifying the particular steps to be taken. Alternatively, it may formulate a recommendation, which may be:

- recognition of Convention status;
- refusal of asylum;
- refusal of asylum, but granting of leave to remain in Spain on humanitarian grounds;
- refusal of asylum, but recognition of the applicability of the non-refoulement clause (without specific reference to any leave to remain in Spain).

The Ministry usually follows the CIAR's opinion, although it is not binding. According to Section 7 of the Asylum Act, any disagreement between the CIAR and the Ministry of Interior must be settled by the Council of Ministers. The processing of an application under the ordinary determination procedure, from the submission of the application to the formal notification of the Ministry's decision, must be completed within six months. In practice, however, the processing time usually lasts for up to eight or ten months, and may even exceed more than one year.

Judicial appeals

All negative final decisions on asylum matters can be appealed the National High Court ("Audiencia Nacional"), whose remit covers judicial review of first instance administrative decisions made by Ministers and Secretaries of State. An appeal must be lodged within two months of the communication of the negative decision to the applicant. Appeals are based on written material only and no oral hearing is possible.

The possibility of a new accelerated court procedure after an inadmissibility resolution was introduced (art. 78 of the - LJCA). According to what the different Central Courts of the Litigious Administrative became competent for asylum cases when an inadmissibility resolution was issued. An appeal must be lodged as well within two months of the communication of the negative decision to the applicant. Appeals are based both on written material and an oral hearing.

The possibility of a new accelerated court procedure after an asylum inadmissibility resolution was introduced (art. 78 of the - LJCA). As well as for all Aliens Law appeals whenever the amount wasn't over 13.000euros.

Under both courts appeals do not have automatic suspensive effect, but the suspension of removal proceedings may be requested to the Court. If such suspension is granted, no removal can take place until the court has reached its decision. Conversely, there have been cases when asylum seekers were removed from the country pending their appeals, where the court did not grant suspensive effect. The time required to process an appeal case before the National High Court is between 18 months and two years, sometimes even more.

Rulings made by the National High Court may be further appealed to the Supreme Court ("Tribunal Supremo"), which examines the legality of the decisions but not the facts of the case. Again, suspensive effect is not automatic but may be requested. If it is granted before the National High Court, it is, in principle, subsequently maintained, unless the Supreme Court decides otherwise. The Supreme Court may uphold or overrule the judgement of the High Court in part or as a whole. In the latter case, the Court renders a decision on the application and in that way, it establishes and defines new rules related to asylum matters.

Administrative review

Asylum seekers also have the option, which tends to be the preferred option, to have a refusal decision administratively reviewed under Section 9 of the Asylum Act. According to Section 9, an asylum seeker whose application has been processed through the ordinary determination procedure and finally rejected may apply for a new examination of his/her case ("reexamen del expediente"), if he/she has obtained new documentary evidence in support of his/her claim, or the circumstances, which justified the refusal, are no longer valid (particularly if the situation in the country of origin has changed substantially).

Given the "declaratory nature" of the asylum procedure, i.e. it does not "make" a person a refugee but "declares" that s/he is a refugee entitled to certain rights in the light of that person's circumstances, asylum seekers may ask for re-examination of their case at any time. The procedure is the same as the ordinary determination procedure: an investigation by the OAR, a proposal by the CIAR and a decision by the Minister of Interior. The application for re-examination can also be rejected in limine if conditions are clearly not met.

In addition, Spanish administrative law provides for certain remedies that may also be used in asylum cases:

- Demand for reconsideration ("recurso potestativo de reposición"). As an alternative to lodging an appeal directly with the National High Court, applicants may submit an initial request to the administrative body, which issued the decision – in asylum cases the Minister of Interior – asking for reconsideration of the decision. Such requests, which must be lodged within one month of the decision's communication, can be based on any factual or legal reasons. If the decision is confirmed or if there is no reply within three months after the resolution was notified to the asylum seeker, the applicant can file an appeal for judicial review with the National High Court. This remedy, which avoids the time and expense attached to a judicial procedure, can be useful in cases where the rejection of the application was made on the basis of a blatant error in the appreciation of the facts;
- Extraordinary administrative review ("recurso extraordinario de revisión"). This is subject to very stringent conditions and requires documentary evidence of an administrative error. It is hardly ever used for cases rejected under the ordinary determination procedure, but it is sometimes useful where inadmissibility cases are concerned, i.e. when new evidence appears after the deadline for lodging an appeal to the Court has expired.

Applications from abroad

It is possible to apply for asylum at a Spanish embassy abroad, provided the applicant is in a third country. Applications lodged with an embassy are sent to the Spanish Ministry of Foreign Affairs together with a report from the embassy concerned, which then forwards the cases to the Ministry of Interior. These applications are not processed under the admissibility procedure but directly under the ordinary determination procedure. As a rule, applicants from abroad are not allowed to come to Spain until they are granted asylum, however exceptions can be made under particularly compelling circumstances requiring an urgent transfer to Spain.

Rejection at the border

In principle, every alien has the right without legal limitations, to apply for asylum in Spain, to have his/her claim duly processed and to remain in the country until a final decision has been made on the application. However, the amendments made to the Asylum Act in 1994 put an end to the automatic right of entry that previously applied to

asylum seekers and introduced an accelerated version of the general admissibility procedure in country and at border points.

The same admissibility procedure applies to both border and in-country applicants, with the exception that the border procedure is subject to shorter deadlines.

All asylum applications submitted to the Spanish authorities, at border points or in the country, are always examined on both formal and material grounds. UNHCR is able to interview the applicant, although in practice this rarely happens. A recommendation on border applications must be provided by UNHCR within 24 hours of notification of the decision. UNHCR's opinion at this stage is very relevant because if it's positive this means an automatic admission resolution by the OAR, only when UNHCR opinion is negative won't be binding on the authorities.

In accordance with the border admissibility procedure, asylum seekers who do not meet the requirements for entering Spain legally are kept at the border point until the Minister of Interior has made a decision on whether or not the claim is admissible. If the application is deemed admissible, the applicant is allowed to enter the country. If not, entry is refused and the applicant removed from the territory. However, a rejected asylum seeker who lodges an appeal, must be allowed to enter.

Detention

Asylum seekers are never detained when they lodge their claim within the territory. When asylum seekers lodge their claim at the border, they are held, not "detained", while the asylum office decides on the admissibility of inadmissibility of the asylum claim. Therefore as the applicant is not being detained, if he/she wishes to leave the premises he/she just has to inform the authorities, but no entry the Spanish territory. The maximum length of time to go through the admissibility procedure at the border is 5 days. If the decision is refusal to grant admission the asylum seeker can ask for a re-examination of his/her request within the next 24 hours. Within a period of 2 days the re-examination must be decided upon. If the decision is again negative, the applicant has to leave the border post and will be returned to their country of origin or to a third country[27].

Spanish Aliens legislation[28] provides for the detention of aliens found unlawfully in the country for a maximum period of 72 hours without judicial authority. This can be extended to 40 days in an internment centre (Centro de Internamiento para Extranjeros - 'CIE'), once a judge has authorised the internment of the alien. While in a CIE, any alien may apply for asylum and he/she receives legal assistance to do so.

Pending a decision on the admissibility of the claim to the asylum procedure, the applicant will remain in detention at the CIE. He or she may be released before completion of the 40 days[29] should his or her application be accepted into the asylum procedure prior to its expiry.

Aliens who are intercepted attempting to enter illegally, and who then submit asylum claims which are handled under the in-country admissibility procedure, may be sent to CIEs such as the ones in Fuerventura and Lanzarote in the Canary Islands. Although persons held in the internment centres are not free to leave, these facilities are not considered to be penitentiary centres. In practice, some of these centres are severely overcrowded, and serious concerns were expressed in the past as to the conditions of detention at these facilities[30, 31].

The Asylum Law (Law 5/1984 on the Right to Asylum and Refugee status), meanwhile, allows for asylum seekers' movements to be restricted to transit centres at border points pending a decision on their admissibility. Adequate facilities are required to be established for that purpose at border posts. Applicants may be held there for a maximum of six days. In 2000, the Constitutional Court ruled that detention of an applicant, whose claim was found to be inadmissible, in an airport transit zone beyond the otherwise general 72 hour detention deadline was not unlawful, as the person concerned was free to return to his or her country of origin, or to a third country. The Court therefore considered this kind of detention not to be a deprivation of liberty, but an administrative measure with a view to preventing aliens from entering Spanish territory after being denied admission into the Spanish asylum procedure.

Alternatives to detention

There are no alternative measures to detention under Spanish Law. An asylum seeker has obligation to regularly review his or her identity card. This serves as a de facto reporting requirement.

SWEDEN

Provisions governing alien, detention and asylum related issues are contained in the Aliens Act. The Act came into effect on 31 March 2006 and has replaced the outdated 1989 text.

Asylum procedure[32]

Upon the arrival to Sweden, asylum seekers should immediately contact the Migration Board (Migrationsverket) responsible for the implementation of the asylum procedure. The Migration Board is an authority responsible for the issuance of admission and residence permits, for asylum and citizenship issues and for repatriation and international cooperation. After the submission of the asylum claim, the process of the claim examination begins. The assessment can have two forms - accelerated or standard procedure. Claims found unjustified or claims falling under the Dublin Regulation/third safe country institute are processed under the accelerated procedure, other applications are examined within the standard procedure framework. For applicants, whose claims are assessed under the standard procedure but in whose case it is not obvious, that the asylum will be granted, a counsellor assisting them during the procedure is appointed and will help them to complete information necessary for the claim assessment.

If the asylum application is rejected, the applicant can appeal to the Migration Court. The appeal is submitted through the Migration Committee, which also assesses the case. If the decision is negative, the appeal is forwarded to the Court. The appeal has a suspensive effect. The Court will examine the applicant's reasons for the submission of his claim and may decide to grant asylum. If the Court comes to the opinion that there are no grounds for granting asylum, the appeal is refused. After that, the applicant should voluntarily leave the territory (with the possible assistance of the Migration Committee). One more appeal to the Administrative Court in Stockholm can be submitted, however, only matters of generally fundamental importance can be admitted for processing. Where aliens do not observe their duty to depart voluntarily, the Police may use measures ensuring their departure.

Detention

According to the new Aliens Act[33], decision on expulsion or decision refusing admission to the country is valid for four years. After this period the validity of these decisions expires.

Detention related issues are governed by the provisions of Chapter 10 of the Aliens Act (entitled "Detention and Supervision of Aliens). Aliens over 18 years of age can be detained if

1) the alien's identity is unclear and he or she cannot establish the probability that the identity he or she has stated is correct;
2) the right of the alien to enter or stay in Sweden cannot be assessed;
3) it is necessary to enable an investigation to be conducted on the right of the alien to remain in Sweden;
4) it is probable that the alien will be refused entry or expelled under Chapter 8, Section 1, 2 or 7;
5) the purpose is to enforce a refusal-of-entry or expulsion order.

A detention order under the second paragraph (points 4 or 5) may only be issued if there are reasons to assume that the alien may otherwise go into hiding or pursue criminal activities.

The length of detention foreseen by point 4) must not exceed 48 hours. Otherwise, the maximum length of detention is two weeks; in exceptional cases, this period can be extended. In cases where a decision rejecting admission to the territory or ordering expulsion has been issued, the length of detention cannot (with certain exceptions) exceed two months.

Under certain conditions, the legislation allows also the detention of persons under 18 years of age (for the maximum period of 72 hours). This period can be extended by further 72 hours.

The detention order is reviewed two weeks after the detention. If an expulsion order/decision rejecting admission

to the territory has been issued, then the detention decision is reviewed after two months. The review is done during oral proceeding.

A detention order made by a police authority or the Swedish Migration Board may be appealed to a migration court.

Alternatives to detention

Provisions governing this area are contained in the Aliens Act, in the chapter focusing on the detention of aliens. All alternatives are summarized under the "Surveillance" title. Basic provisions of the legislation stipulate that under certain conditions specified by law, detention of aliens can be replaced by surveillance. The law also defines the term "surveillance": surveillance means that the alien concerned is obliged to report at regular intervals to the Police or the Migration Committee. Surveillance order may also include an obligation to hand over travel document or another identity document.

The surveillance order is reviewed after six months. The review has a form of oral proceeding (unless it is obvious that no oral proceeding needs to be held).

THE NETHERLANDS

Under the Dutch legal order, asylum procedure and detention related issues are governed by the 2000 Aliens Act. Asylum and refugee issues fall under the competence of the Justice Ministry.

Asylum procedure

The body responsible for the assessment of asylum claims is the Immigration and Naturalization Service (IND[34]). The IND has also other duties carried out in cooperation with the Police. These include e.g. border controls, controls of residence permits validity or monitoring, whether foreigners obliged to depart from the country have indeed done so. Asylum applications must be submitted in the so-called Application Centre, where also other necessary procedures take place.

In the Application Centre, initial assessment of the claim submitted is made (within 48 hours). These 48 working hours usually make up several working days. The asylum procedure consists of the following steps:

- Step 1: Indication of intention to apply for asylum
- Step 2: Registration
- Step 3: Initial interview
- Step 4: Initial assessment
- Step 5: Detailed interview
- Step 6: Report and preliminary decision
- Step 7: Decision
- Step 8: Residence or departure from the country

During the first interview, IND examines whether more facts and information need to be ascertained about the case or not. If yes, the asylum seeker is transferred into one of the reception centres where the asylum procedure continues under the supervision of the so-called screening officer. These reception centres are called open centres; however, they include a duty to regularly report to the Police. If within 48 hours the IND has sufficient material for the assessment and refusal of the claim, the claim is examined in accelerated procedure in the Application Centre.

If a negative decision is issued after the asylum seeker has already been transferred to the reception centre, he can remain on the territory pending the judicial decision on his appeal. If the Court's decision is again negative, the applicant may still appeal to the so-called Council of State. However, at this stage it is not possible for the asylum seeker to await the decision in the Netherlands.

Departure from the country

If the asylum claim is rejected or if the Court rejects the appeal, the alien must depart from the Dutch territory. He himself is responsible for the departure, i.e. he must do all necessary steps to ensure his departure. In case he won't do so within the specified period of time, he can be expelled.

Detention

Article 6 of the Aliens Act applies to situations where aliens are refused admission to the Dutch territory. As the Netherlands lie within the Schengen space, refusal of admission can take place either at the airport or sea-port. Aliens refused admission must leave the country and can be detained at the borders.

Administrative detention is used also in certain cases of rejected asylums seekers. The purpose of detention is to ensure expulsion. Detention is applied only if the alien remained on the territory illegally after his asylum claim had been rejected or when it is expected that he may try to avoid expulsion. The authority responsible for the review of the detention decision is the responsible district court.

In 2003 and 2004, two so-called Removal Centres have been opened. These centres are in fact detention centres and accommodate people who can be expelled quickly.

The length of detention is not specifically provided for by the Aliens Act. Aliens can be detained as long as chances for expulsion exist. Of course, individual circumstances of the case are taken into account. According to the judicature, the length of detention should not exceed six months unless there are serious reasons for this.

Detention centres are regularly visited by the Ombudsman.

Alternatives to detention

Similarly to other countries, the Dutch system foresees alternatives to detention in the form of reporting duty. In 2006, a new alternative for accompanied minors has been introduced. In order to prevent negative impacts of detention on children, minors can be accommodated with guardians during the time of the detention of their parents. Of course, the most suitable option is to accommodate children with family members or relatives living in the Netherlands.

UNITED KINGDOM

During the course of the last decade, asylum has become one of the most salient political issues in the UK. The years 1993-2004 have seen no less than five major pieces of asylum focused legislation enacted, where previously none had existed. This increasingly restrictive and somewhat impenetrable accumulation of laws and regulations has developed in conjunction with a broad effort to control asylum numbers and 'root out abuse'. Perhaps one of the most disturbing features of the armoury of measures employed in relation to the achievement of these aims has been the administrative and often prolonged detention of asylum seekers. Despite the government's assurance that detention is used only as a 'last resort', a growing number of asylum seekers, who are not suspected of or charged with any offence, are routinely detained in purpose-built detention centres and criminal prisons throughout the UK. This use of detention has expanded rapidly, from a capacity of 250 places in 1993 to the present (November 2005) capacity for 2,644 persons[35].

Asylum procedure[36]

The asylum procedure falls under the competence of the Home Office, or more precisely one of its departments, the Immigration and Nationality Directorate (IND). Asylum can be applied for after the entry to the country (airport/sea port) at any immigration officer. Such applicants are known as the port-applicants. Another possibility is to ask for asylum directly at the IND in Croydone or Liverpool after the admission to the territory. These applicants are marked as in-country applicant.

The course of the asylum procedure differs according to whether the applicant is a port- applicant or an in-country applicant, i.e. according to when and where he applied for asylum (if immediately or with certain delay). The

submission of the asylum claim is followed by an initial interview (screening interview), where applicants are questioned about their personal identity and the mode of their arrival to the country, they are photographed and their fingerprints are taken. Grounds for the asylum claim can be mentioned briefly. In cases of undocumented aliens, the interview focuses in large extent on why documents are missing. If no satisfactory explanation is provided, the applicant can be taken into detention and accused of criminal offence. In result of the interview, the Dublin Convention can be applied, decision on accelerated processing of the claim can be made (e.g. in cases of applicants from safe countries of origin) or it is concluded that the applicant did/did not apply for asylum immediately after his arrival to the country.

All port-applicants (and some in-country applicants) are issued temporary residence permit in the United Kingdom (so-called letter IS 96).

The initial interview is followed by an interview on the reasons for the submission of the asylum claim. While the asylum decision is pending, applicants have many duties which must be observed, otherwise their claim can be refused because of the lack of cooperation and the violation of their obligations. The applicants must report changes of address, must come for interviews and fill-in all necessary forms within the specified deadline etc. Appeals against negative decisions can be submitted to the Asylum and Immigration Tribunal. The appeal submission has a suspensive effect only for certain categories of applicants.

Detention[37]

The decision to detain in the UK is an act of administrative discretion. People who have been refused leave to enter the UK or who are required to submit to further examination at ports of entry are liable to be detained for an indefinite period under the 1971 Immigration Act. Most immigration detainees are either asylum seekers who have arrived legally and whose claims are being investigated, or asylum seekers whose claims have been rejected and are awaiting removal. They are liable to be detained at any point in the asylum process. Other detainees include people who have not arrived legally or who have overstayed their visas and a small amount of people with criminal convictions who are being deported. There are some overlaps between the categories. Immigration Officers (IOs) have power in law to detain or grant temporary admission to people who fall into these categories and they act without reference or effective accountability to any court or independent review body. However, as a matter of policy, the authority to detain is vested in Chief Immigration Officers (CIOs). The decision about whether to detain or grant temporary admission is therefore 'a discretionary process' in which IOs and CIOs play a part. The Nationality, Immigration and Asylum Act 2002 extended powers to authorise and prolong detention, allowing Home Office caseworkers to decide to detain someone. At the time of the creation of these powers in 1971, and for many years afterwards, it was never intended they would be used to routinely detain asylum seekers. Rather, it was intended that they would be used to briefly detain, pending their imminent removal, those refused entry to the UK as visitors, students or workers[38].

The responsible immigration authority can decide on the detention of asylum seekers according to the Immigration Act provided that detention is necessary. Detention most frequently occurs when, in the opinion of the responsible authority, the asylum claim can be processed quickly or when there are reasons to expect that the applicant will not provide necessary cooperation and will not stay in touch with the decision-making authority or if the asylum seeker's identity needs to be determined.

Asylum seekers can be detained at any stage of the asylum procedure. Detention is therefore used not only as a measure ensuring speedy departure from the country. Detention is more and more frequently ordered in cases, which can be processed quickly. This is true for asylum applicants as well as for residence permit applicants. Special detention centres have been designated for such "quick" cases. The length of stay in such centres is usually 7-10 days.

Detention must be based on a written decision which includes also the justification of the decision. Detention decision can be rejected; in such case, a lawyer must be contacted. The maximum length of the detention is not specified. This is perceived as a problem by NGOs as, in their opinion, it makes the length of detention liable to misuse or inadequate use. Six-month detention is not exceptional and cases of two-year detention have also been reported.

The 2002 Nationality, Immigration and Asylum Act has formally changed the titles of detention centres to "removal centres". However, according to the Ministry the function and reasons of the detention remain the same.

Requests for the judicial review of detention decisions can be forwarded to the High Court. It is also possible to take advantage of the so-called habeas corpus procedure, i.e. procedure on matters related to personal freedom restriction.

Alternatives to detention[39]

The United Kingdom legislation foresees standard reporting and registration duty. Released aliens must report regularly to the relevant authorities and must provide information enabling the IND to contact them at any time.

Specific is the use of bail. The bail is a legal procedure which can be initiated by basically any detainee; applicants can be released under certain conditions. When detainee applies for bail, his case is examined by the Asylum and Immigration Tribunal, where an independent immigration judge will decide whether the release should be allowed. During the judicial procedure, the immigration service must show that detention was necessary and that no alternative to detention could be used. If the request for bail is rejected, the applicant can re-apply at a later stage. If the bail is allowed, obligations are specified to the applicant. He must for example provide a certain amount of money as a guarantee must reside at a specific address and must report regularly to the immigration service or the Police.

Another option how to secure release is to apply for the so-called temporary admission. If temporary admission is granted, it is usually tied to the obligation to reside at a certain address and to report regularly to the immigration service.

It is also possible to apply, usually through a legal representative, for the so-called CIO bail. The CIO bail requires the provision of large amount of money by two people (approximately £2,000 each).

The bail is not granted for an unlimited period of time. Released aliens are obliged to come to the court in order to have the bail arrangement extended and must keep appointments under the potential appeal procedure. Where bail is not extended, the individual concerned can be detained again.

SURVEY OF ALTERNATIVES IN NEW EU MEMBER STATES

CZECH REPUBLIC

The term "detention" is contained in the Act No. 326/1999 Coll., on the Residence of Foreigners on the Territory of the Czech Republic amending certain regulations (further referred to as the Aliens Act). The detention of foreigners is governed by the provisions of Chapter XI, the residence of aliens in the detention centres for foreigners by Chapter XII and the execution of deportation by Chapter XIII. The term "detention" itself is not defined by the law; however, it is possible to distinguish two types of detention objectives: the first objective is described in Article 124 entitled as "Detention of Aliens for the Purpose of Administrative Expulsion" - the purpose of the foreigner's detention here is therefore administrative expulsion. The second objective, described in Article 129, is "detention of aliens for the purpose of readmission transfer or transit".

Issues related to the asylum procedure are governed by the Asylum Act (Act No. 325/1999, Coll.). As of 1 September 2006, new amendment implementing the relevant EU regulations has come into effect. The umbrella term for asylum and the so-called obstacles to departure has now become "international protection". The law has also changed the regime of obstacles to departure, which is newly called "subsidiary protection" and which can be granted for a specific period of time (after which it is reviewed).

Asylum procedure in detention centres for foreigners

After the apprehension and subsequent detention, the Police are obliged to inform the alien about the possibility to apply in the Detention Centre for Foreigners for asylum. The alien can do so within seven days after being informed about this possibility. If he does not do so, the Police shall start the process of his deportation into the country of origin. Aliens, who decide to apply for asylum, can be expelled after the termination of the asylum procedure. The length of the asylum procedure initiated by a detainee usually exceeds the lawful period of detention (i.e. 180 days), even though the Ministry of Interior (the decision making body in the first instance) and the district courts pay special attention to the processing of these cases. Aliens therefore have a possibility to legally reside in the CR for several months after their release, which motivates many detained foreigners to apply for asylum. The relationship between the asylum procedure and residence in detention centres is defined in Article 127, para 2 of the Aliens Act, which stipulates that the submission of an asylum claim in detention does not constitute a reason for the termination of the detention.

The asylum procedure is governed by the provisions of Act No. 325/1999 Coll., on Asylum. The decision-making authority in the first instance is the Ministry of Interior of the Czech Republic, the Department of Asylum and Migration Policy. Most asylum claims are rejected in the first instance as manifestly unfounded with the justification that they were submitted with the intention to avoid administrative expulsion. Complaints against negative decisions of the Ministry of Interior can be submitted to the District Court and the appeal has a suspensive effect (i.e. the applicant maintains his asylum seeker's status and cannot be deported). If the Court confirms the negative decision of the Ministry, the alien can use an extraordinary remedy, the so-called cassation complaint. This complaint is examined by the Supreme Administrative Court and its submission also has a suspensive effect. The decision of the Supreme Administrative Court is final and the alien, who has usually been already released from the detention centre by now, must depart form the Czech territory if he wants to avoid repeated detention.

We may ask whether it is reasonable, economic and useful to insist on the full period of detention being observed in case of persons, who have applied for asylum. As a rule, the asylum procedure is not finalized within 180 days (the maximum length of detention) and the alien cannot be expelled during the detention (while the purpose of detention is precisely to enable expulsion). In these cases it would be better if the persons concerned could reside in standard asylum seekers centres or in another special establishment (i.e. alternatives to detention can be used). In the Czech Republic, system of alternatives has not yet been established and at this moment no development in this field is expected.

Centres for the detention of foreigners

Centres, in which foreigners are detained, are called Detention Centres for Foreigners. There are four such centres in the Czech Republic. In summer 2006, one detention centre has been turned into a branch office of the Prague-Ruzyne airport reception centre. The reason for this was a great pressure generated by the number of asylum claims submitted at the airport mostly by Egyptian nationals. However, should the number asylum claims decline, the centre may return to its original purpose.

Reasons and conditions of detention

Reasons and conditions of detention are listed in Article 124 of the Act on the Stay of Foreigners; these include the following:

1) Only foreigners over 15 years of age can be detained. Unaccompanied minors under 15 years are not detained and are transferred to a special establishment for foreign children. Children accompanying their parents share the situation of their parents. If unaccompanied minors are detained, the Police will appoint for them a guardian. The term "unaccompanied minor" refers to a foreign national under 18 years of age, who finds himself on the CR territory without being accompanied by his parents or other legal representatives, regardless of the fact whether he applied for asylum in the CR or not[40].
2) The foreigner must have received a decision on the commencement of the administrative expulsion procedure. The purpose of detention generally is to implement the administrative expulsion decision issued to the alien because he violated the provision of the Aliens Act.
3) There is a danger that the alien could threaten the State security, to violate public order in a serious manner

or to hinder/complicate the implementation of the decision on administrative expulsion or if the alien is listed as a person non grata. The law further sets out a sample list of situations, which can constitute such acts. Most typically, these include repeated violations of the Aliens Act, attempts to cross State borders in concealment or outside standard border-crossing points. A list of personae non grata is a database of persons, in whose case expulsion punishment/administrative expulsion has been effectively ordered.

The legal basis for detention is the detention decision. The decision is issued by the Aliens Police department, which has apprehended the alien concerned.

Length of detention

The period for which aliens can be detained must not exceed 180 days. The 2005 amendment has shortened the period of detention in the case of aliens less than 18 years old to 90 days. However, if an alien turns 18 during the detention, he is considered adult and can be detained for the full period of 180 days. Children residing in detention centres together with their parents remain with their families during the whole time of detention (i.e. up to 180 days).

After 90 days, unaccompanied minors are transferred to the Diagnostic Centre for Foreign Children in Prague. Then they stay in child foster homes with education centre and in the Vestec Foster Institute (an establishment known as PERMON located nearby Příbram). The functioning of these centres is governed mainly by the Act No. 109/2002 Coll. on the Execution of Institutional and Protective Education in School Establishments and on Preventive Education Care in School Establishments and by the Decree No. 334/2003 Coll. regulating the details of institutional care in school establishments[41].

Termination of detention

According to the Aliens Act, detention must be terminated if

a) the reasons for detention cease to exist;
b) the administrative court cancelles the detention decision or if the district court releases the foreigner (for more details, see part focusing on judicial review);
c) the alien has been granted asylum;
d) the alien has been issued long-term residence permit for the purpose of protection on the territory.

Alternatives to detention

The Czech legislation does not provide for a system of alternatives to detention. The only option available to detainees is a judicial review or unofficial request for release addressed to the Aliens Police. The difficult aspect of the judicial review is the length of the procedure; the courts often do not manage to issue their decisions within the maximum 6-months period of detention. It seems to be more effective to submit a request for review of detention reasons to the Aliens Police (the department, which has detained the foreigner). The Police take into account the detainee's background (preferably family) in the Czech Republic, his chances to secure accommodation as well as his income source. Problematic is also the lack of uniform practice among various Aliens Police departments - at some places, foreigners are regularly released after certain documents are provided, at other places this is not sufficient.

Legislative plans do not indicate that the CR intends to introduce a system of alternatives to detention. On the contrary, amendments to the aliens and asylum legislation expect that detention of aliens will occur more frequently and that new detention options should be introduced - e.g. detention of asylum seekers after the termination of the asylum procedure (in order to secure their departure from the territory).

CYPRUS

Cyprus, lying off the southern coast of Turkey and the western coast Syria and Lebanon and having Egypt to its south, is at the crossroad of Europe with the Middle East and North Africa. Its 671 km coastal line combined with its geographic situation, situation of legal limbo in the North and recent accession to the EU, triggered irregular migration, in particular through the North of the island to the South (through the Green Line), in particular with the

relaxation of the restriction on freedom of movement in 2003[42].

Cyprus has adopted its national Refugee Law in January 2000, which has since then been amended several times. Currently, the Refugee Law of 2000 – 2004 is in force.

National framework on detention can be found in The Constitution of the Republic of Cyprus, the Alien and Immigration Law 1959, the Refugee Law 2000-2004, the Law that Guarantees Detainees' Rights and also in the Supreme Court Decisions.

Asylum procedure

Cyprus, although a signatory state to the Geneva Convention from the times it was a British colony, it only started implementing the Convention in 1998. As there were no implementing asylum and administrative structures in 1998, when the first asylum seekers came to Cyprus, the UNHCR offices in Cyprus started handling the cases. In 2000, mainly because of its obligations to the E.U. as a candidate country, Cyprus passed its first Refugee Law, which was amended several times since then, while the necessary asylum structures were set up much later and only started examining asylum applications in 2002[43].

According to the KISA report[44], there have been constant violations of the right of the asylum seekers to access the asylum procedures. More specifically:

- National law provides that applications can be submitted at any entry point of the Republic and at any police station. In practice, applications may be submitted only in one police station in every city, with the exception of Nicosia where there are two. At the police stations designated to receive asylum applications there is rarely any professional translator present. Consequently, asylum seekers are never informed of their rights and obligations and of the required procedures even though this is a right recognised to asylum seekers also by European Community law.
- Asylum seekers who do not have travel documents or any kind of identity papers can submit their applications only at the Paphos Gate police station in Nicosia. They are systematically denied access to the procedures and, in the majority of cases, they have been instructed to secure those documents as a condition for submitting an application. In some cases, asylum seekers were holders of national passports that had been considered false by the police and thus access was denied. Assumed nationality is, in many occasions, a factor for discriminatory treatment in relation to access to the procedure in the absence of documentation.

Applications are examined in the first instance by the Asylum Service and in case of rejection by the Refugee Review Authority.

Detention

One of the main areas of concern is the current trend of access to asylum procedures and detention. The Police, who are the competent organ of receiving asylum applications, proved that they are unable to process the submission of the increased number of applications, in an efficient and timely manner. In some cases this resulted in asylum-seekers being treated as illegal migrants. The liberal provisions of the Refugee Law on detention are being by-passed by the provisions of the Aliens and Immigration Law. The Director of the Migration Department started to issue deportation orders towards asylum-seekers who applied after prolonged illegal stay in the country or those who entered illegally. Deportation orders are not implemented towards asylum-seekers, pending a final RSD (refugee status determination) decision, but asylum seekers remain in detention for indefinite periods, with no judicial review. The conditions of detention have been severely criticized by independent officials of the State, as well as by the Committee for the Prevention of Torture of the Council of Europe[45].

The Constitution of the Cyprus Republic anticipates maximum duration of detention to be 3 months. The Refugee Law includes the provision of 8 days of detention when ordered by a competent court with the possibility to extend the detention, but not more than 32 days in total.

An order is always required if a detention is to be considered legal. Depending on the circumstances, the order could be issued either by the court or by the Immigration Officer.

Reasons and conditions for detention

Under the Refugee Act, asylum seekers may be detained only for the following reasons:

a. Ascertainment of identity
b. Ascertainment of the fact upon which an application is based
c. Protection of public security and order. According to the Aliens and Immigration Law, the state has the right to deport any alien residing in Cyprus if they are considered to be a threat to public order or public security. Every asylum seeker falling in the above category, even if the 'crime' committed is a minor offence or it falls within the scope of immigration rules, is considered as a threat to public order and thus detained and, in most cases, deported. Their extended detention is not supported by any court order.

Yet the existing practice is that often the Director of Migration Department is making use of the articles of Migration Law regarding deportation thus issuing deportation orders together with detention orders. When the reason/time for detention has expired the deportation order is being extended for as long as the Asylum claim would need to be concluded, thus prolonging the detention. For a great number of detainees who are kept for several months and up to 1 years in detention and after studying the Supreme Court decisions as well as the Ombudsperson suggestions to the Administration, it is clear that there is an abuse of the letter and the meaning of the law through this practice.

According to the Geneva Convention and the national legislation, asylum seekers cannot be punished for illegal entry. In practice, however, a great number of asylum seekers are being detained on the basis of detention and deportation orders by the Immigration Officer due to the strict interpretation of the provision that 'asylum seekers need to communicate to the authorities their intention to apply for asylum in due time. This practice has worsened after a decision of the Supreme Court, according to which asylum seekers may not be detained for illegal entry with a Court decision under the refugee law but they may be detained on detention and deportation orders of the Immigration Officer on other grounds under the aliens and immigration law, particularly if they are 'illegal' (undocumented) migrants. 'Illegal' migrants are also considered those who enter or reside illegally in the Republic of Cyprus. Sometimes, a month or even a few days are considered a long enough period for asylum seekers to be branded as 'illegal' migrants, which leads either to their long-term detention until their claim is examined at a final stage (by the Refugee Review Authority) or to their deportation. Both measures are used without court orders and on the basis only of a decision of the Immigration Officer[46].

In cases where asylum seekers have committed a crime under either the criminal code or any other law and have been sentenced by the court, on completing their sentences they are not released. They are removed from Central Prison but they remain in custody in detention centres on detention and deportation orders of the Immigration Officer, which are normally suspended until their asylum claim is examined at a last stage. These practices could lead up to 8 - 10 months of detention without a court order.

Alternatives to detention

According to the report on the monitoring of conditions in detention centres by Apanemi[47], in Cyprus no typical alternatives to detention exist. The government does maintain a reception centre for asylum seekers who are not detained – the Kofinou Reception Center.

ESTONIA

Issues relating to the residence of foreigners in Estonia are governed by the Aliens Act and the Obligation to Leave and Prohibition to Entry Act; asylum issues fall under the competence of the Act on Granting International Protection to Aliens. In 2005, extensive amendment of the Asylum Act (effective as of 1 July 2006) has been adopted which reflects the relevant EU regulations (such as the Qualification Directive, Family Reunion Directive, Procedural Directive etc.). As far as detention issues are concerned, relevant regulations are also contained in the Obligation to leave and Prohibition to Entry Act. Detention of asylum seekers is governed by the provisions of the Act on the Provision of

International Protection to Aliens.

Detention

Estonia has no typical detention centres. Aliens are detained for various purposes and placed in different types of facilities (in custody prisons, expulsion centres or border facilities). The length of detention is specified by the law; detention in border facilities must not exceed 48 hours. This period can be extended by a judicial order. Detention for over 48 hours is decided about by the Citizenship and Migration Board, the Police or the Border Guard.

As far as detention of asylum seekers is concerned, according to the Act on the Provision of International Protection to Aliens, asylum seekers can be detained in special reception centre while the initial asylum proceedings take place (reception of the asylum claim, verification of identity etc.). This in fact is not a detention in the real sense of the word, even though it includes temporary restriction of personal freedom. Reasons for which asylum seekers can be detained are specified in Article 32. Generally speaking, they include various reasons such as determination of identity, public order and security protection, protection of public health, violation of internal rules in the reception centre or a well-founded suspicion that administrative/criminal offence has been committed. Dublin cases are not detained. The detention must not exceed 48 hours and any extension beyond this period must be based on a judicial order. Provisions speaking about a special reception centre are in fact rather hypothetic as no such centre exists in Estonia and detention of asylum seekers in a reception centre therefore does not occur.

If aliens submit asylum claims in expulsion centres, detention or prisons, they remain in the establishment until the decision on their asylum claim is made. This is true for the stay in expulsion centre. As far as custody prisons or prisons are concerned, aliens must remain there for the period of time specified to them at the time of the apprehension.

Expulsion centres are run by the Estonian Board for Citizenship and Migration, border facilities are administered by the Board Guard and the potential special reception centre should fall into the competence of the Ministry of Social Affairs.

Persons who are detained because of their illegal residence on the territory and who applied for asylum are released and transferred to standard reception centres for asylum seekers.

Asylum procedure[48]

In detention centres, asylum applications received are forwarded to the CMB; asylum claims must be submitted as soon as possible. Aliens who do not have a permission to enter Estonia must ask for asylum without delay the Border Guard members. Where aliens are detained while trying to illegally cross the Estonian borders, asylum claims can be submitted to the Border Guard workers. On the territory, asylum claims are filed with the CMB.

The Citizenship and Migration Board (or the Border Guard for some of the procedures) is the body responsible for the implementation of the asylum procedure. It is Estonian particularity that aliens are not informed on their right to apply for asylum. Asylum claims submitted at the borders can be rejected by the Border Guard in cooperation with the CMB if the applicant originates from a safe country of origin, if he arrived to Estonia through a third safe country or if he was granted international protection in another country and can still avail himself of this protection. Otherwise, the Border Guard will forward all materials to the CMB. As in other EU states, the CMB will first assess whether Estonia is the responsible country for the examination of the claim under the Dublin Regulation. Asylum decisions are issued by the CMB and if the decision is negative, CMB will also examine whether the applicant may apply for temporary residence permit on the basis of subsidiary protection.

Applicants, whose asylum claim was rejected by the CMB or the Border Guard, may appeal to the administrative court within ten days after the decision is made. The appeal submission may interrupt the implementation of the expulsion if the court postpones the obligation of the asylum seeker to depart from the country. In such cases, expulsion cannot take place before the administrative court issues its decision.

Alternatives to detention

Persons obliged to leave the country may take advantage of certain controlling measures replacing detention. These

include registration of address and regular reporting to CMB. In order to simplify the asylum procedure and to make it faster and more effective, asylum seekers can be ordered to reside at a specific place and report regularly and to inform the CMB about their intention to leave for more than three day from the registered address. However, these options cannot be considered fully as alternatives to detention.

HUNGARY[49]

Provisions governing the asylum procedure are contained in the 1997 Asylum Act (Act 139 of 1997 on Asylum), which has been subjected to many amendments. There is also Governmental Decree No. 172/2001 (IX.26.) setting out detailed rules of the asylum procedure.

Issues related to the residence of aliens are governed by the provisions of the Aliens Act (Act 39 of 2001 on the Entry and Stay of Foreigners) and by the decree on the implementation of detention ordered in aliens policing procedures.

Asylum procedure

The asylum procedure falls under the competence of the Office for Immigration and Nationality (OIN). No special deadlines or conditions are set out for the submission of asylum claims; also, the asylum procedure is the same for both standard and detained asylum seekers. Detained asylum seekers are accommodated together with other foreigners. Detention centres are special establishments different from custody prisons or standard prisons.

An interesting fact related to the Hungarian asylum procedure is that only a small part of asylum claims is rejected as manifestly unfounded (41 in 2005, 73 in 2004). Manifestly unfounded claims are processed under the accelerated procedure within 15 days (the procedure is specified in Article 43 of the Asylum Act). The Act provides that a claim can be rejected as manifestly unfounded if:

a) it is obvious that the applicant has not been persecuted in his country of origin and cannot have well-founded fear of persecution;
b) the application is intentionally fraudulent or intends to misuse the asylum procedure (e.g. when the applicant intentionally stated false information or has used forged travel document);
c) a third safe country is obliged to receive the applicant;
d) the applicant is a national of the European Economic Space.

If the result of the asylum claim examination is negative or if the refugee status/temporary protection is withdrawn, a procedure on expulsion of the alien can be initiated.

No administrative appeal is permissible against negative asylum decisions and the applicant must contact a court with a request for judicial review of the decision. The request must be submitted to the body, which issued the contested decision; the authority must forward the file together with the appeal to the court without delay. The body responsible for the assessment of appeals is the Budapest Municipal Court. The court must decide within 30 days after the receipt of the request. During the examination of the request, oral proceeding is held. The court's decision is final and cannot be appealed against.

Detention

In Hungary, there are eight closed detention centres. The centres are run by the National Border Guard. The Hungarian Helsinki Committee has a contract with the National Border Guard on the regular monitoring of the detention centres. The centres are also visited by UNHCR workers, by the Ombudsman and representatives of the Prosecutor's Office.

As far as the grounds for detention are concerned, under the Aliens Act, an alien can be detained if

a) he hides from the authorities and avoids expulsion;
b) he refuses to leave the territory of Hungary or if there are well-founded reasons to expect that he will delay

the expulsion procedure in another manner;

c) he seriously or repeatedly violates the rules valid in the residence centre to which he has been assigned or if he does not keep the official appointments even though he was obliged to do so.

According to the law, three types or objectives of detention exist. The first one is detention resulting from the refusal to depart, the second is detention for the purpose of implementing expulsion order and the third one is detention for the purpose of monitoring and surveillance of the alien if OIN (see below) ordered the alien's expulsion. The difference lies in who can order the detention: in the first case, detention can be ordered by the Aliens Police, in the second/third case the Office for Immigration and Nationality (OIN) is responsible. These administrative authorities can order detention only for five days. Extension of detention is decided about by the court: in the first and second type of detention, the court may extend detention for 30 days, in the third type to 12 months. The maximum length of detention must not exceed 12 months. The third type of detention has been known in Hungary for already long time, while the first and second type was introduced by the Act XXXIX in 2001. Dublin cases are also detained.

The detainees may contact the court within five days from their detention with a request to review the lawfulness of the detention decision. However, the Aliens Act does not specify what is meant by the lawfulness and it is therefore hard to say how extensive the review should be, which in practice constitutes a problem.

Alternatives to detention

Currently, the Hungarian legislation does not foresee alternatives to detention. The monitoring of the Hungarian Helsinki Committee revealed that detention of asylum seekers occurs less and less frequently as the asylum seekers often indicate their wish to apply for asylum already at the borders. However, Dublin cases are detained regularly. The decreasing number of detained asylum seekers seems to result rather from the decreasing numbers of asylum seekers arriving to the country than from a change in the authorities, approach.

LATVIA

During 2002 almost all the essential laws determining the implementation of functions in the competence of the Office of Citizenship and Migration Affairs were elaborated and adopted anew. On 31 October, 2002 the Immigration Act was adopted by the Parliament and it came into force on 1 May 2003. The Immigration Act was passed in order to ensure immigration policy confirming the national interests of the Republic of Latvia. The process of drawing up legal acts was complicated, as the national interests of the country have to be balanced with international commitments of Latvia and international instruments of human rights[50].

The Office of Citizenship and Migration Affairs is a supervisory body of the Ministry of Interior of Republic of Latvia responsible for issue of identity documents and travel documents, maintenance of the Population Register, implementation of state migration policy, including development and implementation of repatriation and asylum policy.The process of implementation of other guidelines of course continues.

It is Latvian speciality (and in certain extent also the speciality of other Baltic states) that only small numbers of asylum seekers are registered. This is the result of the geographic location of the Baltic states and of the fact, that these republics are still considered to be transit rather than final destination countries. In 2005, the number of asylum claims registered in Latvia increased to 20. Nonetheless, Latvia is well prepared to receive asylum seekers. On the Eastern border of Latvia every border point is accommodated with premises for potential asylum seekers. The "Mucenieki" Reception Centre for approximately 200 asylum seekers has been established and well accommodated with foreign financial help, however, for most time it stays empty.

Asylum procedure[51]

On 7 March 2002 Parliament passed the Asylum Law which on 1 September came into force. To ensure functioning of the law, seven Cabinet of Ministers regulations have been approved.

The following novelties have been introduced in the Asylum Law:

- procedure established in which a person can claim an alternative status, if in his/her domicile there exists a

threat of death penalty or corporal punishment, torture, inhuman or humiliating treatment or humiliating punishment, as well as in the situations when for reasons of external or internal armed conflicts the person needs protection and cannot return;

- established procedure in which a group of persons can be granted temporary protection if there are ethnic conflicts or civil war in their domicile;
- accurate procedure of submitting asylum applications has been established – they can be submitted to the State Border Guard at border control points before entrance into Latvia or at the territorial structural unit of the State Border Guard;
- amendments have been made in the procedure granting asylum – in case, after the final decision has been taken, new facts essentially changing the state of matters appear at the disposal of the person, he/she has the right to submit a second application to the Refugee Affairs Appeal Board;
- the criteria of the third safe country have been defined – if a person prior to arrival in Latvia has resided in the country which has ratified the 1951 UN Convention on Refugee Status, in the country where there exist no threats or where he/she could have requested protection, asylum will not be granted in Latvia.

According to the Latvian Asylum Law of 2002 (that went into force on 1 September 2002), a person who arrives in the Republic of Latvia in order to receive asylum and obtain the refugee status or an alternative status shall submit an application to the State Border Guard at the border control point before entry into the country. A person already located in the Republic of Latvia shall submit an application to the territorial unit of the State Border Guard. The Refugee Affairs Department of the Office of Citizenship and Migration Affairs of the Ministry of Interior examines the application by means of the information received from the State Border Guard.

Possible outcomes of the procedure (types of decisions and permits)

If there is a reason to believe that the application is manifestly unfounded or that the applicant comes from a safe country of origin or from a safe third country, the accelerated procedure will be applied. In that case the State Border Guard must inform the Refugee Affairs Department within three working days for border applicants and within five working days for applicants already in the country. Then, the Refugee Affairs Department has to decide within two working days (border applicants) or five working days (applicants already in the country) to refuse the granting of refugee or alternative status.

If an application is not refused in the accelerated procedure it is being processed in the normal procedure. Within three months the Refugee Affairs Department has to decide whether to grant or refuse the application. For substantiated reasons this period may be extended to one year. A positive decision may result in the Convention refugee status (with a permanent residence permit) or an alternative (humanitarian or protection) status.

Apart from the asylum procedure there is a possibility to grant temporary protection for a specified period of time to a group of aliens in case of a mass influx of displaced persons.

Appeal procedures

The Appeals Board for Refugee Matters (supervised by the Ministry of Justice) examines complaints regarding the decisions of the Refugee Affairs Department. A decision of the Board is final.

Appeals against a negative decision in the accelerated procedure must be done within one working day for border applicants and within two working days for applicants already in the country. The Board has two or three working days respectively to examine the appeals. A negative decision resulting from the normal procedure can be appealed within seven working days. The Board has to examine this appeal within three months. If, after the Board has taken a negative decision, new facts become available to the person which facts substantially change the circumstances, the person is entitled to submit a repeat application to the Board. The Board has to take a decision within two working days on the justification of the repeat application. If the application is considered to be justified, the board will examine the application within two weeks and take a decision on granting or refusal.

Detention[52]

Detention related issues are governed by the Immigration Act. Similarly to the Czech Republic (which however has never been a part of the Soviet Union) most of detained foreigners are persons who have not entered the country recently but have resided in Latvia for several years or even decades but who, following the collapse of the former

Soviet Union, were registered in countries outside Latvia or because different reasons did not change their documents to passport valid in the Republic of Latvia. Many of them have long established links with Latvia, including a permanent place of residence, family ties and employment. Even when it is difficult to establish any significant links with other countries for these persons, the law does not make it possible to grant them a legal status to reside in Latvia. The decision of authorities of Immigration board to detain these people is motivated by formal considerations that if they have not legal status in the country then by law they cannot have a legal place of residence as well as a legal job and income. Other people who are detained in the camp are persons who have asked for asylum but whose identity is not confirmed yet or whose applications have been rejected and who are awaiting expulsion from Latvia. And, of course, the detention centre also accommodates persons who have entered the country illegally or have violated the law on the residence of aliens in Latvia.

The number of the so-called illegal immigrants in Latvia is decreasing every year, mainly for the reason that there are fewer and fewer people without any legal status in the country, however, it is still very high in comparison with the number of asylum seekers. In 1997 there were 347 such persons, three years later – in 2000 – 269 persons, 214 in 2002, 174 in 2003 and 146 in 2004. Also the number of expulsion orders issued decreased.

The length of detention

Until May 2003 when the new Immigration Law came into force in Latvia, the detention of persons in the detention centre for illegal immigrants was regulated very poorly. Persons were kept there for unlimited period of time without a court decision, and in one case a Chechen man and his family spent even five years there. During a monitoring visit in 2003, the administration authorities informed that the length of detention varied from one-two weeks to several years, and largely depended on contacts with relevant embassies and the time required for the arrangement of the necessary travel documents.

In accordance with the new Immigration Law, which came into force on May 2003, an illegal immigrant can be detained by the police for three hours before he/she is handed over to border guards. The border guards may detain an illegal immigrant for up 10 days. If the person cannot be expelled within 10 days, the extension of detention can only be authorised by court decision. The court may initially authorise the extension of period of detention for up to 2 months, however, State Border Guard can submit an application on the extension of detention period, and the total period of detention pending expulsion may not exceed 20 months. A decision on detention can be revoked either by judge acting on a prosecutor's protest or the chairing judge of a higher instance court.

However, even after the determination of time limit problems remain. A person who is released from detention (for instance, because there is no state that is willing to assume responsibility for the person and, therefore, the person cannot be expelled) is not by law assigned any defined legal status. As a result, the person can be detained repeatedly, theoretically, even for another 20-month period.

Review of detention decision

Serious problem in respect to the procedure of detention of migrants is lack of relevant court proceeding. It is neither criminal proceeding, nor administrative proceeding under the Latvian legislation, and thus the order of court hearing and the rights of detainees during trial remain undefined.

Under the Immigration Law a detainee has the following rights:

- to submit a complaint to a prosecutor, contact the consular institution of his country and receive legal assistance. A detainee shall be acquainted with these rights at the moment of detention;
- personally or assisted by his representative to become acquainted with the materials related to his detention;
- to communicate in the language he understands, using interpreter's services, if necessary;
- to appeal the decisions of authorities as stated by the law
- to be convoyed and accommodated separately from the persons suspected of criminal offences.

However, none of these rights is regulated in detail. For example, it is not stated who can represent a detainee and how the representation should be affirmed: by written warrant or orally; who can be a representative: any person having a legal capacity or only a sworn advocate; whether there are cases when the government shall provide legal help free of charge and how a detainee can receive legal assistance.

Access to legal aid is limited at the detention camp, as many detainees lack means to afford a lawyer. There is no legal aid provided by the state for such detainees. In several cases detainees have been denied the right to examine

documents related to their detention. Visits of State Border Guard inspectors are irregular and, on occasions, the inspectors have filed to provide complete information to the detainees about their case. The detainees have the right to lodge a complaint directly with the prosecutor, but they claim that the prosecutor has never visited the camp.

Alternatives to detention

Information is not available. The numbers of asylum seekers are very low.

LITHUANIA

In Lithuania, asylum procedure and detention issues are governed by the Act on the Legal Status of Aliens (Act No IX 2206 of 29 April 2004).

Asylum procedure

The asylum procedure falls under the competence of the Migration Department of the Ministry of Interior. Lithuanian legislation recognizes three types of asylums - refugee status, subsidiary protection and temporary protection. Asylum applications can be submitted according to Article 67 at the State Borders Protection Service, at the territorial Police agency or to FRC. Here again we meet with the institute of manifestly unfounded applications (Manifestly unfounded asylum application means an application by an alien for granting asylum in the Republic of Lithuania where there is clearly no substance to the applicant's claim to fear persecution in the country of origin or the claim is based on deliberate deception or is an abuse of asylum procedures and it is clear that for the above-mentioned reasons it meets none of the substantive criteria established under this Law for granting asylum in the Republic of Lithuania).

No deadline applies to the submission of asylum claims in detention centres and there are no differences in the processing of asylum applications submitted in or outside the detention centres.

If the asylum decision is negative, the applicant may appeal to the responsible regional court and then to the Supreme Administrative Court.

Detention

The Act on the Legal Status of Aliens defines detention of aliens in the following manner:

Alien's detention means temporary accommodation of an alien in the Aliens Registration Centre, where the alien's freedom of movement is restricted on the grounds and for the period specified by this Law.

Aliens can be detained in the Foreigners' Registration Centre (FRC) for the maximum period of 48 hours; extension beyond this period is possible only on the basis of a judicial order. FRCs is run by the State Border Guard Service. Aliens can be detained for 48 hours also by the Police. The maximum length of detention is not specified. Detention decisions are made by locally responsible courts. Detained asylum seekers are placed together with other detained foreigners.

As far as reasons for detention are concerned, these are listed under Article 113 of the Act on the Legal Status of Aliens. Aliens (asylum seekers) can be detained

a) in order to prevent their unlawful entry into Lithuania;
b) if they unlawfully entered or resided in Lithuania;
c) for the purpose of their handover under a readmission agreement if they were refused admission to the country;
d) if there is a suspicion that they have used false document;
e) if they were issued expulsion decision;
f) if it is necessary in order to prevent the spread-out of contagious diseases;
g) if their residence on the territory constitutes a risk for the public security, order or health.

Dublin cases are not detained. Such persons are issued temporary residence permits valid until the time of their transfer to the responsible country and their residence is therefore considered legal.

An appeal against the detention decision can be submitted within ten days to the Supreme Administrative Court; review of the detention decision can be also asked at a local court.

Alternatives to detention

There is a system of alternatives to detention in Lithuania. These alternatives are governed by Article 115 of the Act on the Legal Status of Aliens entitled "Alternative Measures to Detention". Alternatives to detention can be used if:

1) the alien's identity has been confirmed;
b) the alien does not constitute risk for the public security and order;
c) the alien cooperates with the court.

Under such circumstances, the court may decide that the alien won't be detained and that alternatives to detention will be used.

Alternatives to detention include the following measures:

1) reporting duty - the alien must report regularly and at a specific time to the responsible Police department;
2) the alien must provide information on his place of residence to the responsible authority;
3) unaccompanied minors are entrusted into the care of social office;
4) Lithuanian nationals or aliens residing legally in Lithuania can receive the alien into their "care";
5) the alien will continue to be accommodated in the FRC but his freedom won't be restricted.

MALTA

Asylum related issues are governed by the Refugee Act[53] adopted in 2001; aliens' issues are regulated by the provisions of the Immigration Act[54].

Asylum procedure

The asylum procedure falls into the competence of the Refugee Commissioner. This institute has been established by the Refugee Act. The Commissioner, a person with experiences from the asylum field, is appointed by the Prime Minister. Special competencies belong to the United Nations High Commissioner for Refugees (UNHCR). UNHCR has free access to any asylum seeker and can be present during any asylum interview by the Refugee Commissioner.

The Commissioner shall examine any application for refugee status as soon as possible and shall recommend the Minister to accept or to reject the application. If the Commissioner recommends accepting the application, the Minister shall declare the applicant eligible for refugee status or appeal against such recommendation. The Commissioner may recommend to the Minister that, in spite of the fact that a person does not satisfy the requirements to be recognised as a refugee, such person should be granted humanitarian protection in Malta. When such recommendation is made, the Minister shall grant such humanitarian protection.

The asylum system recognizes the institute of manifestly unfounded claims which are processed under the accelerated procedure. The accelerated procedure has special rules governing the examination of claims and well as the appeal procedure. According to the Refugee Act, manifestly unfounded is a claim

a) which is not related to refugee grounds as defined in the Convention;
b) which is totally unfounded and the applicant provides no indications that would fear persecution in his country of origin or his story contains no circumstantial or personal details;
c) in relation to which the applicant gives clearly insufficient details or evidence justifying his claim and his story is inconsistent, contradictory or fundamentally improbable;
d) where the applicant claims false identity or bases the claim on forged documents which he maintains as genuine when questioned about them;
e) in relation to which applicant deliberately made false representations of a substantial nature;
f) in relation to which applicant, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult;
g) in relation to which applicant deliberately failed to reveal that he had previously lodged an application for asylum in another country;
h) in relation to which the applicant, having had ample earlier opportunity to submit an asylum application,

submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier;

i) in relation to which applicant has flagrantly failed to comply with the substantive obligations imposed by Malta's legal provisions relating to asylum procedures;

j) prior to which the applicant had made an application for recognition as a refugee in a country party to the Convention, and the Commissioner is satisfied that his application was properly considered and rejected in that country and the applicant has failed to show a material change of these circumstances;

A person seeking asylum in Malta shall be examined under the accelerated procedure when

1) his application appears prima facie to be manifestly unfounded (see the definition above);
2) the person is a national or citizen of a safe country of origin or, if he is not a national thereof has a right of residence therein, and there is no serious risk to him of persecution within the terms and scope of the Convention, or
3) the person has either already been recognized as a refugee under the Convention in a safe third country or if he had the opportunity, at its border or within its territory, to apply there for refugee status prior coming to Malta and there is clear evidence of his admissibility to that third country.

If after interviewing the applicant the immigration officer comes to the conclusion that the application falls into one or more of the categories specified above (1-3), he shall immediately forward a written report on the case together with the application made by the person, to the Commissioner.

Where a report is made to the Commissioner, the Commissioner shall examine the application without delay and in any case within three days after receiving the report from the immigration officer. The Chairman of the Refugee Appeals Board shall, within three days and independently of the examination being carried out by the Commissioner, examine the application referred to him by the immigration. Where both the Commissioner and the Chairman of the Refugee Appeals Board independently of each other come to the conclusion that the application falls under any one of the specific categories mentioned in 1-3, the application shall be rejected and such decision shall be final and conclusive and notwithstanding the provisions of any other law no appeal or action for judicial review shall lie before the Refugee Appeals Board or before any other court of law.

If the application does not fall under the accelerated procedure, it will be examined under the standard procedure, which includes fewer peculiarities than the accelerated procedure. Negative decisions can be appealed against to the Refugee Appeals Board. The Refugee Appeals Board consists of a chairperson and two other members. The members of the Board hold the office for a period of three years and are eligible for reappointment. The Board members should have experience from the asylum field. The Board shall have power to hear and decide on appeals against the recommendation of the Commissioner. The applicant has a right to free legal assistance under the same conditions as apply to Maltese nationals.

Detention

Detention related issues are governed extensively by provisions of the Aliens Act. The reason for this is the geographic location of Malta and the number of migrants arriving to Malta in small ships or hidden aboard of large vessels. The legislation must reflect these circumstances and we therefore meet with some unusual provisions and empowerments.

Reasons for detention and the detention process

1) The Principal Immigration Officer has a power to enter or board any vessel and to detain and examine any person arriving at or leaving any port of Malta whom he reasonably supposes not to be an exempt person and to require the production of any prescribed documents by such person; he has other powers and duties as conferred upon him by or under the Aliens Act or as may be prescribed for giving effect to this Act.
2) Where leave to land is refused to any person arriving in Malta on an aircraft, such person may be placed temporarily on land and detained in some place approved by the Minister until the departure of such aircraft is imminent. Where leave to land is refused to any person arriving in Malta by any other means, such person at his own request may, with the leave of the Principal Immigration Officer, be placed temporarily on shore

and detained in some place approved by the Ministry. Any person, while he is detained under abovementioned provisions, shall be deemed to be in legal custody and not to have landed.

3) If any person is considered by the Principal Immigration Officer to be liable to removal as a prohibited immigrant, the said Office may issue a removal order against such person who shall have a right to appeal against such order. Upon such order being made, such person against whom such order is made, shall be detained in custody until he is removed from Malta. Detention may also serve for the purpose of expulsion or departure from the country.
4) The master of any vessel shall detain on board any person arriving in that vessel, whether member of a crew or passenger, to whom leave to land has been refused by the Principal Immigration Officer, while such vessel is in the territorial waters of Malta, and a person so detained shall be deemed to be in legal custody.

The law also stipulates other conditions under which an alien can be detained while on a board of a ship or any other sea vessel.

A person with respect to whom a deportation order is made may be detained in such manner as may be directed by the Ministry until he leaves Malta and may be placed on board a vessel about to leave Malta, and shall be deemed to be in legal custody whilst so detained and until the vessel finally leaves Malta.

It shall be lawful (notwithstanding any intervening prosecution) for the Principal Immigration Officer or any Police officer to place any person to whom this article applies on board the vessel in which he arrived in Malta or on board any vessel belonging to the same owners for removal from Malta.

This article shall apply to

(a) any person to whom leave to land has been refused;
(b) any person who, not having been granted leave to land, is found on shore in Malta;
(c) any member of a crew who, having been granted leave to land or leave to land and remain in Malta, is reasonably suspected of having acted or of being about to act in contravention of the Aliens Act.

Review of detention

A request for the review of detention can be submitted by detainees to the Immigration Appeals Board. The Board shall also have jurisdiction to hear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation in accordance with the following subarticles of this article. The decisions of the Board shall be final.

The Board shall only grant release from custody where in its opinion the continued detention of such person is taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time.

Provided that where a person, whose application for protection under the Refugees Act has been refused by a final decision, does not co-operate with the Principal Immigration Officer with respect to his repatriation to his country of origin or to any other country which has accepted to receive him, the Board may refuse to order that person's release. The Board shall not grant such release in the following cases:

(a) when the identity of the applicant including his nationality has yet to be verified, in particular where the applicant has destroyed his travel or identification documents or used fraudulent documents in order to mislead the authorities;.
(b) when elements on which any claim by applicant under the Refugee Act is based, have to be determined, where the determination thereof cannot be achieved in the absence of detention;
(c) where the release of the applicant could pose a threat to public security or public order.

A person who has been released may, where the Principal Immigration Officer is satisfied that there exists a reasonable prospect of deportation or that such person is not co-operating with the Principal Immigration Officer with respect to his repatriation to his country of origin or to another country which has accepted to receive him, and no proceedings under the Refugee Act are pending, be again taken into custody pending his removal from Malta.

Alternatives to detention

The Immigration Act sets out an obligatory condition that released detainees must report regularly to the Immigration Office (at least once a week). The precise interval is specified by the Appeal Board. This reporting duty is a typical alternative to detention. There are also obligations of asylum seekers in the asylum procedure: an asylum seeker

a) shall not seek to enter employment or carry on business unless with the consent of the Minister;
b) shall, unless he is in custody, reside and remain in the places which may be indicated by the Minister;
c) shall report at specified intervals to the immigration authorities as indicated by the Minister.

Provided that if any such applicant is in breach of any of the provisions of paragraphs a), b), c) hereof he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not more than six months.

POLAND

Asylum and detention related issues in Poland are governed by two acts: Aliens Act of 13 June 2006 and the Act on the Provision of Protection to Foreigners on the Polish Territory of 13 June 2006. The Aliens Act is a general norm governing the field of immigration while the Act on the Provision of Protection governs asylum related issues.

Detention of asylum seekers

In Poland, there are special provisions applicable in case of asylum seekers' detention (different from the detention of standard foreigners). The provisions on the detention of asylum seekers are included in the Act on the Provision of Protection. Under Article 40 of this Act, asylum seekers are detained only if

1) they submitted asylum claim during border control after they unlawfully entered the Polish territory or if they resided on the Polish territory unlawfully;
2) before submitting the asylum claim they crossed or attempted to cross illegally the State borders or they received a decision ordering them to depart from the Polish territory or an expulsion order;
3) after the submission of the asylum claim, facts described in Article 88 of the Aliens Act occurred (illegal employment, risk to the public order etc.).

Detention is ordered by the local Court. Review of the detention decision can be applied for at the District Court.

Even though many reasons for the detention of asylum seekers are foreseen, in practice their detention is relatively rare. Because of the lack of statistics, no detailed information is available. Families with children are not detained. Detention of asylum seekers usually does not exceed one month. The reason for that is the lack of sufficient detention capacities as well as the fact that persons of Chechen nationality, who meet requirements for granting subsidiary protection, often occur among the detainees.

Currently, fundamental change of legislation is underway which will amend the grounds for the detention of asylum seekers. The draft amendment expects that asylum seekers will be detained only if it is necessary

a) in order to determine their identity;
b) in order to prevent the misuse of the asylum procedure;
c) in order to prevent risks to the safety, health, life or property of third persons;
d) for reasons of the State security and public order.

The draft law also foresees several situations, in which asylum seekers can be detained. These include circumstances:

a) when asylum seekers entered Poland illegally. This does not apply in case of applicants arriving from a country where their life or freedom could be at risk and who asked for asylum as soon as possible;
b) the behaviour of asylum seekers in the reception centre threatens the security, life or health of other asylum seekers or the employees.

Under the Polish legislation, unaccompanied minors cannot be detained.

Length of detention

Detained asylum seekers must be released from detention if no decision is issued in their case within one month. However, if the asylum claim was filed only during the detention, the period is extended to three months (Article 42 of the Act on the Provision of Protection).

Under certain circumstances, asylum seekers can be released from detention at an earlier stage. This can happen if:

a) it is decided so by the President of the Office for Repatriation and Aliens. The President normally issues such a decision, if the asylum claim seems reasonable, i.e. there are most probably reasons allowing granting the applicant refugee status or subsidiary protection;
b) there are general reasons for the termination of detention (Article 107 of the Aliens Act). These reasons include situations when:
1) the grounds, on which the detention was based, ceased to exist;
2) further stay of the asylum seeker in the detention centre could cause serious damage to the health of the detainee;
3) further stay of the asylum seeker in the detention centre is not possible for other reasons;
4) the expulsion decision was cancelled
5) the alien was granted asylum or another type of residence permit.

Release in situations under letter b) is decided on by the locally responsible court. The applicant can appeal against negative decision to the District Court.

The total length of detention must not exceed one year.

Alternatives to detention

As far as the detention of asylum seekers is concerned, the Polish legislation does not foresee any system of alternatives. In case of aliens detained and awaiting expulsion, the Aliens Act in its Article 90(1)(3) permits the release of the alien from detention provided that he resides at a specific address until the expulsion can be implemented. During this period, the alien is obliged to report regularly at a place specified. This option, however, remains unused in the practice. There is also lack of judicature setting out the extent in which the body issuing expulsion orders should consider the application of alternatives to detention.

SLOVAKIA

The term "detention" ("zaistenie") can be found in the Act No. 48/2002 Coll., on the Stay of Foreigners amending certain regulations (Part 6, Chapter 2, Article 62 and following). Provisions governing the detention of aliens are included in Chapter 6, second part. The term "detention" itself is not defined by the legislation.

Detention facility

Centres for the detention of foreigners are called Facilities (Zariadenia). Slovakia has two such establishments, one is currently under reconstruction. These establishments are run by the Aliens Police.

Within these Facilities, two sections can be found: a standard regime section and a separate regime section. Normally, aliens are placed in the standard regime section. The separate regime section is used to accommodate aliens when there is a well-founded fear that the purpose of detention can be violated (if the alien is aggressive, needs special monitoring, if the rights or health of other aliens need to be protected, if he violated internal rules of the Facility or if he is under quarantine).

Reasons and conditions of detention

Reasons and conditions of detention are specified in Article 62 of the Aliens Act. An alien can be detained when:

a) the alien entered unlawfully the territory of the Slovak Republic;
b) the alien unlawfully resided on the territory;
c) the detention is needed in order to implement the administrative or criminal expulsion;
d) the alien was returned by the authorities of a neighbouring State after entering unlawfully its territory;

e) the alien attempted to enter unlawfully the territory of another State from the territory of the Slovak Republic;
f) the alien made his asylum statement after he was issued administrative expulsion order or was sentenced to expulsion;
g) the detention is necessary in order to execute the transfer of the alien under special regulations.

The length and termination of detention

Aliens can be detained only for the period necessary (not exceeding 180 days). The legal base for detention is the decision on detention.

The Police shall release an alien from detention without unnecessary delay

1. if reasons for detention cease to exist;
2. on the basis of Court's decision;
3. if the period of detention reached 180 days.

Asylum procedure

The asylum procedure is governed by the provision of the Asylum Act No. 480/2002 Coll. Currently, a new amendment introducing, similarly to the Czech Republic, the term "subsidiary protection" has been prepared (effective as of 1 January 2007).

The body responsible for the examination of asylum claims is the Migration Office of the Slovak Ministry of Interior. An appeal against negative decision can be submitted to the relevant regional court.

The submission of an asylum claim does not constitute a reason for release from detention. The law further provides that detention does not affect the asylum procedure implemented under the Asylum Act. There is no time-limit for the submission of asylum claims in the Facilities. Also, there is no difference in the asylum procedure in the case of applicants residing within or outside the detention centres.

Alternatives to detention

There are no alternatives to detention of asylum seekers in Slovakia.

SLOVENIA

In Slovenia, issues relating to the residence of aliens are governed by the 1999 Aliens Act, which regulates also issues related to the detention of foreigners. The asylum procedure and the detention of asylum seekers are governed by provisions contained in the 1999 Asylum Act. Both acts are amended regularly; last changes were made in 2006. The right to asylum is embodied also in the Slovenian Constitution (in Article 48).

Detention lasts until the reasons for detention cease to exist; however, the length of detention must not exceed three months. If reasons for detention still exist after this period, the detention can be extended by another month. Under the Aliens Act, foreigners who could not be repatriated can be detained for up to six months. If repatriation does succeed even after six months, the detention can be extended once more by six months. The Police may allow the alien to live outside the detention centre, however, only if he fulfils several other conditions.

The Slovenian legislation foresees also situations when it is impossible to expel aliens to their country of origin as their life or freedom would be at risk there on the basis of their race, religion, nationality etc. In such cases, the aliens are issued temporary residence permit (the issuance of such permit is not automatic, it must be applied for). The permit is not issued if there are reasons to consider that the alien constitutes a risk for the State security or if he committed a criminal offence. Residence permit is extended for as long as the obstacles to departure exist. The responsible authority will to the alien specify the place of residence.

Detained aliens can apply for asylum (no deadlines for doing so are set). As far as asylum seekers are concerned, all applicants who have been issued administrative expulsion or who served imprisonment sentence, are subsequently detained for the whole period of the examination of their asylum claim.

Reasons and conditions for detention

The reasons for detaining an alien are:

1. Ascertainment of identity of asylum seeker (when they can not posses any proof for their identity: identity card, passport etc.)
2. Due to prevention from spreading of contagious diseases
3. When an alien represent a threat for the lives of other people or their belongings
4. Due to the assumption of the abuse of procedure
   - if they don't possess documents to prove identity,
   - if they present fake identity (documents) or fake reasons for granting asylum
   - for purposely destroying documents
   - if they hide fact, that they already lodged application in other country
   - if they lodge application to delay forced deportation etc.

The Asylum Sector of the Ministry of Interior decides on the detention in case of asylum seekers. The Police orders detention in case of other aliens.)

Dublin cases" are detained. After the asylum seeker is returned to Slovenia under the Dublin Regulation he/she can lodge a new asylum application, however according to the Asylum Act a subsequent application has to cite new facts and circumstances due to which they fear persecution in the country of origin. As clearly Dublin II returnees are not able to cite new facts, their application will be decided upon in an accelerated procedure, and deemed manifestly unfounded. A change in the new Asylum Act, which was adopted in February 2006, is the non-suspensive effect of an appeal against the inadmissibility of a subsequent application; according to the new provisions if the new application is based on the same facts as the previous one the application is rejected as inadmissible.

Asylum applicants have the right to appeal against the restriction of the freedom of movement at the Administrative Court within 3 days. The court must convene a hearing and give a decision within three days. The appeal does not have suspensive effect.

Other alien who have been ordered detention by the Police can appeal against it to Minister of Interior in 8 days, it has a non-suspensive effect. The minister has to decide about it in 8 days. Administrative dispute is allowed against the decision about the appeal.

Reasons for the detention of asylum seekers

Under the law, asylum seekers can be detained:

a) in order to determine their identity if no identity documents have been provided;
b) in order to prevent the spread-out of contagious diseases;
c) if the alien constitutes a risk to the lives or property of others;
d) if there are reasons to suspect that the alien misuses the asylum procedure as he did not provide his identity document; or provided false documents or stated untruthful information in order to get asylum;or intentionally damaged his identity document; or concealed the fact that he was granted asylum in another country; or applied for asylum in order to avoid expulsion.

Decision on the detention of asylum seekers is made by the Asylum Department of the Ministry of Interior. Detention of aliens is decided on by the Police.

Detention of rejected asylum seekers

Rejected asylum seekers awaiting expulsion under international agreement are placed in the Centre for Foreigners. The placement in this centre means that expulsion will take place within 48 hours.

Asylum procedure

The asylum procedure in Slovenia falls into the competence of the Ministry of Interior, more precisely the Asylum Department. No deadlines or special conditions apply to the submission of asylum claims in detention. However, if detention was ordered because there are reasons to expect that the asylum procedure could be misused, then most of these applications are rejected as manifestly unfounded under the accelerated procedure. Other circumstances, under which asylum claims can be rejected as manifestly unfounded, include situations when the applicant claims only

economic reasons or other irrelevant facts, or situations when the person concerned intends to travel to other countries. The accelerated procedure takes approximately 14 days.

According to the Asylum Act, aliens entering the territory of Slovenia with the intention to apply for asylum must do so as soon as possible. Delays can lead to their detention based on suspicion that they applied for asylum only in order to misuse the asylum procedure. However, cases where aliens were not aware of the fact that asylum claim can be submitted in Slovenia and applied therefore only in the detention centre have also been registered.

Asylum claims can be processed under the accelerated procedure in cases where applicants stated false information during their interview or claimed only economic/other irrelevant reasons. Such applications are rejected as manifestly unfounded within few days. Under certain circumstances, the provision of false information suffices for the claim to be rejected by the Police at the borders. Legislative provisions allowing this have been challenged at the Constitutional Court. Applicants, whose asylum claims were refused as manifestly unfounded, can submit an appeal but the costs of legal services are not covered then.

If asylum claims are processed under the standard procedure, applicants are invited for a detailed interview. During the appeal procedure, the appellant is entitled to free legal counselling. Appeal is submitted to the Administrative Court and possibly also to the High Court. Appeals have suspensive effect.

Alternatives to detention

Alternatives to detention in case of asylum seekers do not exist. The only possibility is to appeal against the expulsion decision.

Different is the situation of aliens who could not have been deported to their countries of origin. Such situations are also foreseen by the Aliens Act: aliens who could not have been deported within twice six months (because e.g. the alien's identity could not have been determined or the deportation is impossible for other reasons) are issued residence permit valid for the period for which the obstacles to departure continue to exist. The aliens continue to reside in the detention centre.

The Police may allow aliens to reside outside detention centres; however, the applicant must observe certain rules (unfortunately, our Slovenian source has not mentioned which rules). Instead of obligatory accommodation in the detention centre, the Police can use more moderate measures (such as an order to reside at a specific address). It is also possible to order the alien to move only within a specific area and to report regularly to the Police.

In deciding on the application of alternatives to detention, the Police take into account many facts - the circumstances of the alien's illegal stay in Slovenia, his "criminal past", facts indicating the alien's intention to depart/not to depart, his behaviour during the detention, the ability of the alien to secure accommodation, the existence of a guarantor etc.

In practice, alternatives to detention are used only rarely as it is quite difficult to meet all the conditions. Aliens wishing to reside outside the detention centres must provide a guarantee in the form of a letter from a Slovenian national/person with legal residence in Slovenia/ organization. In this letter, the guarantor must state that he agrees to provide the alien with accommodation and undertakes also other duties, which are so numerous that for a foreigner it is nearly impossible to get such a letter. Moreover, the guarantor must have a regular job. The obligations include a pledge to cover all food-related expenses, to pay for the alien's accommodation in the centre for aliens/asylum centre and to cover costs related to the expulsion of the alien should this be necessary.

According to our Slovenian source, alternatives to detention have been used only in seven cases this year, six of them being Ghanaian men released after extensive media campaign and on the basis of a letter of President Drnovsek to the Minister of Interior. The seventh case was a Chinese lady whose release was arranged by the Jesuit Refugee Service.

Slovenia is still a transit rather than final destination country. The number of asylum seekers arriving to the country continues to be large. Detention is therefore used as a tool stopping illegal migrants on their way to Western countries. The use of alternatives, such as hand-over of travel documents and release on bail, therefore seems useful.

D. CONCLUSION

Evaluation of the current situation, identification of problems, possible solutions

The summary information on the situation in various EU countries indicates that most of the States have introduced into their legal systems alternative measures to detention. The most common measure is the so-called reporting or registration obligation where detainees released must inform the Police on their future address and must regularly report to the Police or to another responsible authority. Some countries (such as Slovenia, Finland or United Kingdom) have developed quite singular alternatives to detention, such as release on bail or release upon the provision of a guarantee by an individual/organization. Efforts to introduce alternative measures can only be welcome. The problem shared by many countries, in which systems of alternatives exist, is that they remain largely unused in practice. This could be the result of the conditions specified for its application - the requirements are sometimes difficult to meet and the alternatives therefore cannot be easily used. There are also other reasons, such as the complexity of the alternatives' application and bad coordination of the subsequent control of the released individuals. Also, the limited will to consider alternative measures and to implement them cannot be underestimated. Important are also geographic factors - countries which have recently joined the EU are often considered as transit countries through which aliens arrive to the Western EU States. These countries use the detention as a tool preventing further westward movements of foreigners. Similar is the situation of Mediterranean countries to which many asylum seekers from Africa or Asia arrive.

Problematic is also the vague formulation of basic provisions enabling the use of alternatives. The relevant provisions often do not indicate under which circumstances alternative options can be used. The Project partners therefore propose the following: as far as asylum seekers are concerned, detention decisions should be always issued only after alternatives to detention or placement to the standard asylum/reception centre are fully considered. The grounds, on the basis of which asylum seekers could be detained, should include mainly serious reasons which must be demonstrated by the authorities deciding on detention. Such reasons could include e.g. possible risk to the public order or national security, risk of spreading a contagious disease etc. We may ask whether asylum seekers violating in serious manner their obligations under the asylum procedure (e.g. lack of cooperation, extension of visa etc.) should be detained. In such cases, alternative measures (such as the reporting duty) should certainly be used prior to detention. As far as rejected asylum seekers are concerned, they should get a chance to leave the country voluntarily. For those without travel documents, alternative measures should be applied (such as the reporting duty). During the regular reporting, they could inform the relevant authority about the status of their efforts to secure a travel document etc. Only where no efforts are made, detention should be applied.

Different is the situation of aliens awaiting expulsion. Those possessing travel documents should be allowed to depart voluntarily. This can save costs related to detention. Also, if aliens arrange return themselves, the final destination is selected properly and this prevents cases of persons stranded in capital cities or borders far away from their homes. The deadline for departure should be short but sufficient to allow the alien e.g. to terminate his lease contract, to pack his belongings, buy a ticket, arrange for transit visa etc. The alien can be required to regularly report at the Police in order to prevent e.g. his illegal departure to another state. In cases of aliens without travel documents (who are frequently detained), alternatives measures can be used, especially for those who have built professional or personal background in the country. These aliens could be released (e.g. on bail) and reside with their family while ordered to secure a travel document or another document enabling their return to the country of origin. The progress could be monitored during the obligatory reporting. For aliens, in whose case it is doubtful that they can secure travel documents (e.g. whose embassies are located outside the given country) and aliens who clearly constitute risk to the public order or security or who spread contagious disease, detention should be applied.

Special arrangements are needed in cases of persons who want to apply for asylum, especially in large refugee influx situations. Large refugee influxes may often bring many economic migrants using the asylum procedure as an entrance ticket to the territory of the European Union. However, these population movements contain also many genuine refugees seeking protection from persecution in their country o origin. These two groups must be separated at the time of their entrance to the territory. As ECRE noted on this subject: Regrettably, it is still too often the case that state authorities deny asylum seekers access to asylum procedures, and sometimes to state territory altogether.

For those individuals who are admitted many European states have established expedited or accelerated procedures that appear to be based not only on speed but on a "culture of disbelief" whereby most asylum seekers are presumed to be abusing the system. Such procedural developments have severely compromised the capacity of states to correctly assess whether an individual needs protection. Rather than the focus of the procedure being on identifying persons in need of protection, it has shifted towards techniques devised to screen out as many applications as possible. As a result, expedited asylum procedures appear to be increasingly adversarial in nature. Furthermore, these procedures are often characterised by a critical deficiency of legal and procedural safeguards necessary to comply with the principle of non-refoulement, the cornerstone of international protection obligations[55]."

The project partners demand fair and equal access to the asylum procedure for all; during the asylum procedure each claim should be examined individually and in detail. It is proposed that after the submission of asylum claim upon arrival to the territory, detailed and individual assessment of the asylum claim should take place. In situations of large refugee influxes, detention often occurs at points of entry. This phenomenon cannot be prevented, however, the Project partners refuse the practice of certain states denying the newcomers the right to apply for asylum. Each asylum claim should be registered and only when it is assessed as manifestly unfounded, States may start working on the expulsion of the applicant. Review of asylum claims should be fast but fair and should take into account the circumstances of each individual case. Applicants, whose claim is not rejected as manifestly unfounded and is examined under the standard asylum procedure, should be allowed access to the territory. Also conditions in detention establishments deserve special attention; more details on this issue can be found in the publication "Survey on Detention of Asylum Seekers in EU Member States" prepared under this Project.

Another problem identified by the Project partners is the lack of uniformity during the review of detention decisions. In some countries, detention decisions are subject to automatic judicial review few days after the detention takes place; in other countries, review is possible only upon the request of the detainee and detention decisions are reviewed by the Police or the Courts. Deadlines for the assessment of appeals vary or remain unspecified. The best and most effective solution seems to be obligatory judicial review within short period after the detention. The detainee can provide relevant information or evidence. The deadline for the issuance of court decisions should not be long, however, it is difficult to specify concrete time-limits as the periods of detention vary greatly. Where the review is negative, detainees should be able to contact courts with a request for release/review of the detention decision. The Project partners advocate mainly for swift and effective review where courts assess each case individually and take into account the overall situation of the detainee. This should prevent situations (which have occurred e.g. in the Czech Republic) where it takes several months for the court to decide on the review of the detention decision; cases where no decision is made during the whole period of detention (i.e. six months) are not rare which makes the review institute rather imaginary.

The Project partners welcome that detention related issues have started to be discussed at the European level and became a part of the agenda during negotiations. Common regulation of detention related issues would be useful, in the opinion of the Project partners, especially vis-a-vis asylum seekers and vulnerable groups (such as unaccompanied minors). It would be also useful to set out uniform conditions for the detention decision review - e.g. specification of the judicial nature of the review process or setting-out deadlines for the issuance of decisions. As far as alternatives to detention are concerned, the Project partners hope that countries, which have not yet established systems of alternatives, will do so as soon as possible. States, in which alternatives' systems exist but remain unused, should commission analyses to find out why the system do not function the way they should. Problems and obstacles identified should be removed and alternatives to detention should be used more frequently. It would be also very useful to introduce the obligatory consideration of the use of alternatives before the issuance of decision on detention on the European level.

In discussions on detention and alternatives to detention, the problem needs to be perceived from both the detainees' and the States' perspective; the interests of both parties are completely different. Asylum seekers naturally want to be allowed admission to the territory, they want to have a possibility to work and, if their application is rejected, to remain on the territory and arrange for a different type of residence. The interest of the State, on the other hand, is to admit to its territory only genuine refugees (and even that can be a problem in some countries) and to

return rejected asylum seekers to their countries of origin as quickly as possible.

In the conclusion, we would like to emphasize how difficult it has been to gain information on these issues. Some countries have very good web sites in several language versions where all information, links to legislations and questions to answers can be found; others have not yet established such sources and authentic information (i.e. web sites of responsible authorities of the given country) cannot be used. We therefore had to resort also to other information sources, e.g. data from the ECRE or JRS (idcoalition). In some cases, information displayed not been up-to-date. All in all, gathering information on alternatives to detention has been a very difficult task regardless of the quality of web sites on the asylum procedure or detention. If information on certain countries described in this brochure has been rather sketchy, it is because of the lack of reliable sources and the difficult access to them. The Project partners therefore call on all Member States to complete and regularly update information available at their web sites.

E. NOTES

[1] - The 1999 UNHCR Guidelines on detention of asylum seekers ('UNHCR Guidelines on Detention') reaffirmed the general principle that asylum seekers should not be detained.3 In exceptional cases where such detention may be necessary, Guideline recommends that it should only be resorted to 'after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.'
Human rights bodies have similarly emphasised that detention of asylum seekers should only occur as a measure of last resort, after other non-custodial alternatives have proven or been deemed insufficient in relation to the individual.

[2] - URL: http://www.ecre.org/files/WFsystemssum.pdf, 13. 12. 2006

[3] - UNHCR Guideline on Applicable Criteria and Standards Relating to the detention of Asylum Seekers

[4] - http://idcoalition.org/portal/downloads/reports/JRS%20Europe%20report.pdf

[5] - UNHCR Guideline on Applicable Criteria and Standards Relating to the detention of Asylum Seekers

[6] - URL: http://www.ecre.org/conditions/2003/austria.shtml, 9. 12. 2006

[7] - URL: http://www.belgium.be/eportal/ShowDoc/cgvs/imported_content/pdf/BrochureAsileenBelgiqueAnglais.pdf?contentHome=entapp.BEA_personalization.eGovWebCacheDocumentManager.nl, 11. 12. 2006

[8] - See: www.no-fortress-europe.eu/showPage.jsp?ID=1600

[9] - Ophelia Field: Alternatives to Detention of Asylum Seekers and Refugees, UNHCR, 2006, p. 75

[10] - URL: http://www.belgium.be/eportal/ShowDoc/cgvs/imported_content/pdf/BrochureAsileenBelgiqueAnglais.pdf contentHome=entapp.BEA_personalization.eGovWebCacheDocumentManager.nl, 11. 12. 2006

[11] - URL: http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/application_for_asylum.htm, 27. 11. 2006

[12] - URL: http://www.zuwanderung.de/english/1_fluechtlinge.html, 11. 12. 2006

[13] - See
http://www.bmi.bund.de/cln_028/Internet/Content/Common/Anlagen/Gesetze/Zuwanderungsgesetz__englisch,templateId=raw,property=publicationFile.pdf/Zuwanderungsgesetz_englisch.pdf

[14] - Ibid.

[15] - Ibid.

[16] - Ophelia Field: Alternatives to Detention of Asylum Seekers and Refugees, UNHCR, 2006, p. 111

[17] - URL: http://web.amnesty.org./pages/grc-051005-action-eng, 3. 12. 2006

[18] - URL: http://www.imepo.gr/pdfs/LAW%202910_2001_English.pdf, 4. 12. 2006

[19] - URL: http://www.amnesty.ie/user/content/view/full/739/, 1. 12. 2006

[20] - URL: http://idcoalition.org/portal/downloads/reports/FIDH%20Report%20Italy1.pdf, 11. 12. 2006

[21] - URL: http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.html?tbl=RSDCOI&id=447ff7ac7, 5. 12. 2006

[22] - URL: http://www.ecre.org/files/Italy%20-%20FINAL.pdf, 11. 12. 2006

[23] - URL: http://idcoalition.org/portal/downloads/reports/FIDH%20Report%20Italy1.pdf, 11. 12. 2006

[24] - Article 3: Exclusion from and refusal of asylum

1. Shall not benefit from asylum:
   a) Those who have performed any acts that are contrary to Portugal's fundamental interests or sovereignty;
   b) Those who have committed crimes against peace, war crimes or crimes against humankind, as defined in the international instruments aimed at preventing them;
   c) Those who have committed felonious common Law crimes punishable with more than three years of imprisonment.
   d) Those who have performed any acts contrary to the purposes and principles of the United Nations.
2. Asylum can be refused in case its granting causes demonstrated danger or well founded threat to the internal or external safety, or to public order.

[25] - ECRE Country Report 2004 – Portugal available at: www.ecre.org/files/Portugal%20-%20FINAL.pdf

[26] - URL: www.ecre.org/conditions/2003/spain%202003.doc, 11. 12. 2006

[27] - ECRE Country report 2004 - Spain, available at www.ecre.org/country04/Spain%20-%FINAL.pdf

[28] - Law 5/1984 on the Right to Asylum and Refugee Status, amended by Law 9/1994

[29] - Organic Law 4/2000, as drafted in Law 8/2000, Art. 62
[30] - Ophelia Field, Legal and Protection Policy Research Series - Alternatives to Detention of Asylum Seekers and Refugee, UNHCR, 2006, p. 183.
[31] - for detailed information see Amnesty International report: Spain – The Southern Border, available at www.amnesty-eu-org/static/documents/Spain_detention_report_English_final.pdf
[32] - URL: http://www.migrationsverket.se/english.jsp?english/easyl/evemfar.html, 28. 11. 2006
[33] - URL: http://www.sweden.gov.se/content/1/c6/06/61/22/fd7b123d.pdf, 28. 11. 2006
[34] - http://www.ind.nl/EN/
[35] - URL: http://idcoalition.org/portal/downloads/reports/UK%20Refugee%20studies%20working%20paper.pdf, 13. 12. 2006
[36] - URL: http://languages.refugeecouncil.org.uk/pdf/English/Applying_for_asylum-English.pdf, 6. 12. 2006
[37] - URL: http://www.biduk.org/immigration/facts.htm, 6. 12. 2006
[38] - URL:http://idcoalition.org/portal/downloads/reports/UK%20Refugee%20studies%20working%20paper.pdf, 13. 12. 2006
[39] - URL: http://www.biduk.org/pdf/bail_notebook/notebook_part_1_jan_2004.pdf, 6. 12. 2006
[40] - Kopulet_ G., Nov_kov_ P. 2005 Nezletil_ bez doprovodu, OPU, str.5
[41] - Kopuleta G., Novakova P. 2005 Nezletili bez doprovodu, OPU, str.5
[42] - URL: http://www.unhcr.org/home/RSDCOI/4337e10d2.pdf, 11. 12. 2006
[43] - KISA: Asylum law, policies and practices in Cyprus – An Overview based on asylum cases", 2005, p.2
[44] - Ibid, p.3
[45] - URL: http://www.unhcr.org/home/RSDCOI/4337e10d2.pdf, 11. 12. 2006
[46] - KISA: Asylum law, policies and practices in Cyprus – An Overview based on asylum cases", 2005, p.7
[47] - Monitoring the Detention Conditions of Asylum Seekers in Cyprus, Summary Report Jan06-Jul06, Apanemi
[48] - URL: http://www.mig.ee/eng/asylum/asylum/, 29. 11. 2006
[49] - URL: http://www.helsinki.hu/docs/Asylum%20in%20Hungary%202003%20HHC.PDF, 13. 12. 2006
[50] - http://www.pmlp.gov.lv/images/documents/Doku3.pdf
[51] - http://www.pmlp.gov.lv/images/documents/Doku3.pdf
[52] - http://www.humanrights.org.lv/upload_file/Latvia_immigration.pdf
[53] - URL: http://www.unhcr.it/images/pdf/refugeeact.pdf, 7. 12. 2006
[54] - URL: http://docs.justice.gov.mt/lom/legislation/english/leg/vol_5/chapt217.pdf, 10. 12. 2006
[55] - URL: http://www.ecre.org/files/WFsystemssum.pdf, 13. 12. 006