



European Migration Network Belgium

ALTERNATIVES TO DETENTION: A STATE OF PLAY

15 December 2020, Webinar

This report summarises discussions and key messages from the Webinar “Alternatives to Detention: A State of Play”, organised jointly by the EMN Belgium and the EMN Return Expert Group on 15 December 2020. Supporting materials, including most of the presentations delivered during the webinar, are available on the EMN website.

The webinar aimed at providing participants insights into the current legal framework on alternatives to detention and identifying emerging good practices and pilot projects across Europe. By sharing know-how on the effectiveness, costs and benefits, the conditions and challenges of today’s alternatives to detention, the online seminar was intended as a follow-up to the [Conference on Effective Alternatives to the Detention of Migrants](#) organised by the Council of Europe, the European Commission and EMN in April 2019. The webinar gathered more than 210 participants, and notable speakers from the Belgian government, the European Commission, national administration and civil society.

Key Messages

- The use of migration detention should be adequately contextualised: unlike criminal detention, migration detention is an administrative procedure without a punitive purpose.
- The development and use of a variety of effective alternatives to detention is a crucial element of comprehensive migration policies and it is an important element in relation to the [New Pact on Migration and Asylum](#) (the Pact).
- When there are legitimate grounds for migration detention, the decision to place an individual in detention should be based on an individual assessment. Equally, detention should always be a measure of last resort, whilst effective alternatives should be considered first.
- Alternatives to detention should be adapted to the specific national circumstances, however evidence has shown some common features of effective alternatives:
 - Early engagement with the person concerned and individualised catering of need and understanding of the personal circumstances, including providing information.
 - Focus on building trust between the person concerned and authorities in order to guarantee protection of fundamental rights and ensure compliance with migration procedures.
 - Constructive cooperation among all stakeholders from government and civil society.
 - Strong monitoring and evaluation methods embedded in the implementation of alternatives.

Summary of the event

POLICY AMBITION ON THE USE OF ALTERNATIVES TO DETENTION

Nicole de Moor (Head of the Cabinet of the Secretary of State for Asylum and Migration, Belgium) outlined the ambition of Belgium in the development and adoption of effective alternatives to detention as a crucial element for a credible and effective management of migration in Belgium. The newly established government commits itself to not detain families with children under 18 years old in closed detention centres. In the context of return procedures, the government prioritises voluntary assisted returns while at the same time investing in credible forced return procedures in case the former is not effective or applicable; these require an increase of pre-removal detention facilities. In this context, the government will develop new effective alternatives to detention while expanding the use of alternatives that have already proven their effectiveness after evaluation. To this end the government will put in place a new policy framework, including changes of the legal framework if indicated, outlining the new vision on the use of migration detention.

Mauro Gagliardi (Deputy Head of Unit of the Return and Irregular Migration Unit, DG HOME, European Commission) highlighted that the use of alternatives will be of primary importance to effectively implement some of the provisions of the Pact, as screening and border procedures to prevent illegal entry in the Union and Schengen area. Compared to detention, alternatives would minimise the intrusion in the fundamental rights of the individual concerned, in line with EU values and legal standards set in the European Charter on Fundamental Rights. Alternatives would also achieve a better cost-effectiveness not only by reducing the cost of detention but also by reducing the social costs linked to detention. Alternatives should however effectively ensure compliance with migration procedures including return obligations. For this, there was a need to develop a wider range of alternatives to detention that could cater to the different individual situations and needs of migrants.

ALTERNATIVES TO DETENTION IN INTERNATIONAL AND EU LAW

Lilian Tsourdi (Assistant Professor of European Law, Maastricht University; Member of the Coordination Team, Odysseus Network) outlined the relevant legal obligations and standards to understand the nature and need of alternatives to detention. The latter should be intended as less intrusive measures to be applied instead of detention when a legitimate base for detention exists. Alternatives cannot be used as a general tool for migration management. In line with European and international human rights law, the deprivation of liberty is legitimate only if necessary and proportionate and it therefore requires an individual assessment. Ms. Tsourdi outlines that despite the legal provisions, alternatives are only to a limited extent being used in practice, especially in border procedures or in the context of Dublin transfers. Additionally, alternatives are extensively being used in asylum procedures, which puts into question the focus of the individual assessment. Finally, control and sanctioning mechanisms remain unclear.

ALTERNATIVES TO DETENTION IN PRACTICE: EMERGING GOOD PRACTICES AND PILOT PROJECTS

In this panel, moderated by **Marta Gionco** (Advocacy Officer, PICUM), several practices were presented, outlining to what extent they were effective as for the definition elaborated by the Council of Europe which measures effectiveness against three criteria: respect of fundamental rights, compliance with migration procedures, and costs-effectiveness ratio.

Baudouin Van Overstraeten (Director, JRS Belgium) and **Maaïke Vanderbruggen** (Advocacy Officer, JRS Belgium) presented the Belgian practice of 'return houses'. These consist of accommodation facilities located in five remote areas in Belgium, reserved to families and children subject to return decisions or seeking asylum at the border. Despite the fact that the authorities have put an end to the

detention of minors in detention centres, JRS Belgium noted that there was room for improving this alternative especially to avoid possible trauma on children as consequence of the abrupt change of environment and to guarantee access to legal remedies. An evaluation is also needed to clarify whether the individual assessments responsible for placing families in these facilities were sound. An ideal model of alternatives to detention should be based on community-based approaches engaging families in the resolution of their migration situation with the support of independent dedicated case managers.

Jan Braat (Senior Policy Advisor on Migration and Integration, Municipality of Utrecht) outlined the preliminary outcomes of the agreement on undocumented migrants signed in November 2018 between the municipality of Utrecht, the national government and in total five Dutch municipalities for the provision of assistance to irregular migrants. The services provided included professional counselling, shelters, and healthcare. The case workers were mostly recruited among refugee communities. The outcomes are not yet definitive, although the programme contributed positively to the resolution of several cases; the pilot succeeded in consolidating a multi-layered collaboration between national and municipal governments and civil society. It has also been transferred to Belgium as an example and is as a good practice for other EU countries.

Eiri Ohtani (Consultant, EPIM) presented the final results of the evaluation¹ of the case management projects piloted in Bulgaria, Cyprus and Poland. The evaluation found that about one in four cases were solved either through the delivery of a legal status or through return; about 11% of cases dropped out from the programme or absconded. From a qualitative perspective, the case management approach succeeded in restoring a high level of confidence in migration procedures and authorities of the individuals concerned, overall encouraging their constructive collaboration for the resolution of their situation. The report also identified success factors and challenges.

Trishann Pascal (Manager of the National Detention Programs, Canada Border Services Agency) presented the Canada Border Services Agency's Alternative to Detention (ATD) program. The expanded ATD programs started in 2018 and adopted a variety of alternatives to detention measures. It notably expanded the use of three types of alternatives: Biometric voice reporting, including a location-based option; Community case management and supervision services, consisting of in-community and mandatory residency programmes aligned to individual's need to mitigate risks factors and delivered through third parties service providers; and the use of electronic monitoring, using GPS and radio frequency technology.

¹ Link: https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf.