



## **Ad-Hoc Query on Legal Assistance in Detention Centres**

**Requested by FR EMN NCP on 1<sup>st</sup> March 2013**

**Compilation produced on 10<sup>th</sup> April 2013**

**Responses from [Belgium](#), [Finland](#), [France](#), [Germany](#), [Luxembourg](#), [Slovak Republic](#) (6 in Total)**

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### **1. Background Information**


France has set up a system of legal assistance for illegally-staying migrants held in administrative detention centres pending their removal from France, so that they can effectively exercise their recognized rights. This system existed before the entry into force of the "return" directive but echoes the guarantees laid down by articles 15, paragraph 2.b) and 16, paragraphs 2, 3, 4 and 5. In the context of the current debate in France on the evolution of the system of administrative detention, it would be useful to obtain comparative elements out of the experience of some Member States for which only few observations were made during the first stage of the review of the implementation of the "return" directive (assessment by the TIPIK agency). Member States concerned are Germany, Belgium, Finland, Luxembourg and Slovak Republic.

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**Questions:**

- 1) What type of persons/organizations (lawyers, NGOs, etc.) can intervene in detention centres to ensure the effective exercise of the rights of detained persons pending their removal, and under what conditions?
- 2) What type of services should be provided?
- 3) Which sites are accessible to the persons/organizations concerned?
- 4) Since when and for what reasons such a system has been set up?


**2. Responses**

		Wider Dissemination?	
	<b>Belgium</b>	<b>Yes</b>	<p>1. The following persons and organisations have access to detention centres located on the territory:</p> <ul style="list-style-type: none"> <li>- Lawyers, private or pro deo, (and interpreters who assist them) on condition that they have a client in the centre and as long as they can prove their profession with a professional card. In addition two detention centres (Bruges and Vottem) have implemented a pilot project according to which lawyers organise once or twice a week free legal consultations for detainees (first line legal aid). The lawyers participating to this project can therefore access centres without having clients detained. Following this consultation and if necessary a lawyer will be appointed to assist and represent the detainee (second line legal aid).</li> <li>- NGOs. According to the law (Royal Decree 02.08.2002- see below) the Minister or the General Director of the Immigration Office can authorise one or several organisations and persons to visit detention centres. The right for NGOs to visit detainees is not explicitly guaranteed by the law. In practice some NGOs specialised in migration are granted access to regularly visit detainees in detention centres. Each representative of the organisation needs to obtain an individual approval.</li> <li>- National and international organisations entitled to visit centres as part of their mandate: <ul style="list-style-type: none"> <li>• UNHCR;</li> <li>• European Commissioner for Human Rights (Council of Europe)</li> <li>• the Council of Europe anti-torture Committee;</li> <li>• the Centre for Equal Opportunities and Opposition to Racism;</li> <li>• The Aliens Litigation Council<sup>1</sup>;</li> <li>• The Office of the Commissioner General for Refugees and Stateless Persons<sup>2</sup>;</li> <li>• The General Delegates for the Rights of the Child ( the "Kinderrechtencommissaris" and "Délégué général aux droits de</li> </ul> </li> </ul>




<sup>1</sup> As the authority in charge of the migration procedure.

<sup>2</sup> As the authority in charge of the asylum claim.


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			<p>l'enfant");</p> <ul style="list-style-type: none"> <li>• United Nations Committee against Torture.</li> </ul> <p>- Consular or diplomatic authorities of the State of origin of the detained migrant.</p> <p>2. The services provided include:</p> <ul style="list-style-type: none"> <li>- explanations;</li> <li>- documentation;</li> <li>- social and legal assistance;</li> <li>- legal representation (by lawyers).</li> </ul> <p>3. Sites:</p> <ul style="list-style-type: none"> <li>- Detention centres: accessible to persons and organisation mentioned above (see 1.);</li> <li>- Open return houses (for families): access is granted to one NGO and in addition another organisation in possession of a mandate when it concerns asylum seekers;</li> <li>- Detention centre at the border (Brussels Airport): accessible to lawyers, some organisations such as the Centre for Equal Opportunities and Opposition to Racism and NGOs In the other smaller (regional) airports, access for NGOs is not allowed.</li> </ul> <p>4. Since the origin of the detention centres, lawyers and some NGOs were granted access to detainees on the basis of internal regulations or the practice. A Royal Decree "<i>Arrêté royal du 2 août 2002 fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers</i>" did formalize the rules and the regime of detention centres. It includes rules on who can access detention centers. The motives of this Decree explain that the access for lawyers is in particular based on the right of the defence.</p>
	<p><b>Finland</b></p>	<p><b>Yes</b></p>	<p>1. Lawyers, NGOs, representatives of public legal aid offices.</p> <p>2. In accordance with the Act on the detained person's rights, Section 5, the detained person shall be provided with information on his or her rights and obligations. If possible, the information should be provided in writing in a language that the person understands. For example Refugee Advice Centre organizes weekly briefings for detained persons with no legal representative. After the briefing the detained person may ask for an appointment with a legal representative. Organizing legal services in reception centres and detention unit is based on common practice, centres hold lists of legal representatives in their possession which may be suggestive in terms or choosing the legal representative.</p> <p>3. Legal representatives may meet their clients in detention centres or facilities. The detention unit's ordinance may restrict the visiting hours.</p> <p>4. Since 2002. In 2002 the first Detention Unit was established and the Act on the treatment of detained persons was enacted.</p>

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	<b>France</b>	<b>Yes</b>	<p>1. Legal entities such as associations and NGOs with the task of providing information to foreigners and assistance for the effective exercise of their rights which have been selected through a public procurement procedure can intervene. Once selected, their mission is defined in a convention precisig the framework of their intervention (schedule, sites, etc.).</p> <p>2. Legal entities which have been selected have to:</p> <ul style="list-style-type: none"> <li>- provide information;</li> <li>- organise help desks;</li> <li>- provide documentation.</li> </ul> <p>3. Legal entities which have been selected can meet persons held in detention centres or facilities (places adapted to detention up to a maximum of 48 hours when it is not possible to hold a foreigner in an administration detention centre). The access to detention places is limited; only one legal entity can intervene in one detention centre and the representatives of the legal entity have to obtain individual approval.</p> <p>4. The current system was set up by a Decree of 22 August 2008, codified to the regulatory part of the Code on Entry and Stay of Foreigners and Right of Asylum (Code de l'Entrée et du Séjour des Etrangers et du Droit d'Asile = CESEDA). Before that, only one entity (an association) ensured this type of mission. The new system has been set up for the sake of pluralism, quality and adaptation to the needs of foreigners.</p>
	<b>Germany</b>	<b>Yes</b>	<p>1. Foreigners in detention pending removal are permitted (along with their family members) to enter into contact with legal representatives and the competent consular authorities. On application, staff of relevant relief and support organisations are to be permitted to visit detainees who express a wish for such visits.</p> <p>2. Detainees are to be informed of their rights, in particular regarding contact and visits (and of their obligations and the rules which apply at the detention facility).</p> <p>3. Visits to detainees take place in the rooms allocated for this purpose at the detention facilities.</p> <p>4. The legal basis for the rules specified in the answers to 1. and 2. – Section 62a (2), (4) and (5) of the Residence Act – entered into force on 26 November 2011, thereby implementing Article 16 (2), (4) and (5) of Directive 2008/115/EC on the return of illegally staying third-country nationals.</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. In Luxembourg legal aid is guaranteed to ensure access to justice for all persons with limited financial resources (article 1 (1), (2), (3) and (4) of the grand-ducal regulation of 18 September 1995 on legal aid modified by grand-ducal regulation of 29 October 2004). The system allows that these persons are entitled to free assistance from a lawyer. Legal aid may be awarded for judicial or extra-judicial and contentious or non-contentious cases. However, foreigners are only entitled to legal aid if they fulfill the following conditions:</p> <ul style="list-style-type: none"> <li>• if they are in possession of a valid residence permit for Luxembourg and they fulfill the legal requirements mentioned above;</li> <li>• if they are involved in a procedure concerning international protection (article 7 (1) and 9 (1) and (3) of the law of 5 May 2006, law concerning asylum), access to the territory, residency, deportation (law of 29 August 2008 on free movement of persons and immigration) or extradition (law of 20 June 2001 concerning extradition).</li> </ul> <p>Legal aid for foreigners is part of the general system aimed to provide legal aid to low income people.</p>

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			<p>Article 122 (3) of the law of 29 August 2008 establishes that the applicant in detention has the right to select a lawyer of its own to assist him during all the procedure and to protect his rights.</p> <p>Beside the lawyers, some legal entities such as associations and NGOs acting in the field of providing assistance to people placed in detention have access to the holding facility from Monday to Sunday, 8.00 AM to 12.00 AM and from 13.00 PM to 18.00 PM. This requires a previous and double agreement, one from the Minister of Immigration for the NGO's themselves as legal entities and another one for all individual member of the agreed NGO's wanting to access the Center from the Director of the holding facility (art. 27 of the Grand-ducal regulation of August 17<sup>th</sup> fixing the holding conditions in the Center). Actually, Amnesty International, ASTI, Caritas, ACAT, CLAE, and the Red Cross have an agreement as legal entities and some 50 individual visitors from those NGO's have been allowed to access the Center. In that context, it seems important to point out that the Ombudsman and the Ombuds-committee for the rights of children may access the Center whenever they want.</p> <p>2. The individual visitors of agreed NGO's provide information and moral assistance to the persons placed in detention. As each detainee has access to a lawyer, the NGO's are not entitled to provide legal assistance.</p> <p>3. Agreed NGO's have limited access to the facilities. They may nonetheless access to the main living areas of the Center, excepted dormitories and specified areas.</p> <p>4. The current system has been implemented with the opening of the holding facility in August 2011.</p>
	<p><b>Slovak Republic</b></p>	<p><b>Yes</b></p>	<p>1. Based on the consent from the director of the detention facility the following may intervene in the detention centres – employees of IOM or other intergovernmental organisations (such as UNHCR when the detained person decides to lodge an application for asylum), NGOs as well as prosecutor, ombudsman, lawyers of the detained persons.</p> <p>2. They provide legal protection and legal assistance to the detained persons, and control the observation of the rights of the foreigners in the period of their detention.</p> <p>3. Two detention facilities for foreigners which are in Slovakia (Medved'ov-western Slovakia, Sečovce – eastern Slovakia) are accessible to these persons/organisations. They can also enter the alien police departments which are responsible for the issuance of the decision on detention and undertake the first proceedings with the foreigners who are to be detained.</p> <p>4. This system was introduced in Slovakia from 15 January 2010 when the then valid Act on Stay of Aliens (48/2002) was amended following the transposition of certain provisions of the return directive on legal assistance to third country nationals who are detained.</p>