

Detention and Alternatives to detention in international protection and return procedures





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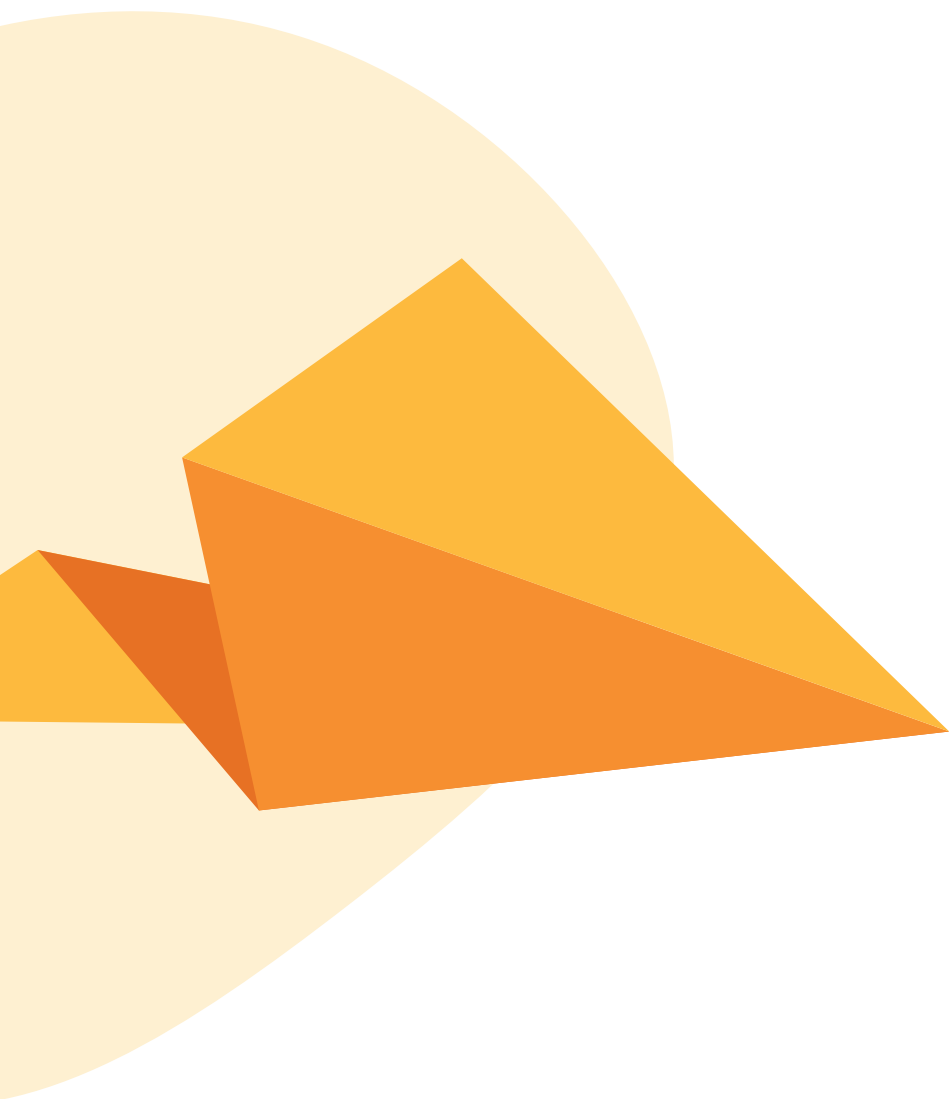
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**COMMON
TEMPLATE**



1 BACKGROUND AND RATIONALE FOR THE STUDY

In the context of migration, detention is *a non-punitive administrative measure applied by the state to restrict the movement through the confinement of an individual for another immigration procedure to be implemented*.¹ EU legislation regulates in detail the detention of migrants within the context of international protection and return procedures, setting the grounds on which an individual can be deprived of liberty and the relevant principles governing the matter. At both European and International levels, legal sources agree on the fact that detention should be used as a “last resort” and encourages the use of alternatives to detention, as an application of the principles of necessity and proportionality in order to avoid arbitrary deprivation of liberty.²

Although there is no common legal definition of alternatives to detention, they can be defined as *non-custodial measures used to monitor and/or limit the movement of third-country nationals during the period needed to resolve migration/asylum status and/or while awaiting removal from the territory*.³ These measures, having an impact on the person’s rights,⁴ are subject to human rights standards and have to be imposed, on a case-by-case basis, by taking into consideration individual factors. Examples of such alternative measures include the obligation of regular reporting to the authorities, the deposit of an adequate financial guarantee, an obligation to stay at an assigned place, etc.⁵ Alternatives to detention measures could entail duties that imply different levels of coerciveness, and they are mainly aimed at mitigating the risk factors identified by the authorities who considered that the particular individual was liable to detention.⁶ As a general principle, it is essential to clarify that the consideration of alternatives is only relevant and legal when there are legitimate grounds to detain.

Both international and EU law guarantee and protect the **right to liberty and security** as a core component of an individual’s fundamental rights. The European Convention of Human Rights (ECHR) in its Article 5(1) states the principle that “Everyone has the right to liberty” while Article

1 EMN Glossary

2 Articles 6, 52(3) and 53 of the EU Charter. Articles 8 and 11 of the Reception Directive (recast). Recital 16 and Article 8(1) Return Directive.

3 EMN Glossary

4 These rights include: the right to family life (Article 2 ECHR; Article 9 CFREU; Article 12(2) 1951 Refugee Convention), the right to privacy (Article 8 ECHR), prohibition of torture (Article 3 ECHR) the prohibition on inhuman or degrading treatment (Article 3 ECHR).

5 Article 8(4) of the Reception conditions directive (recast)

6 Detention of applicants for international protection in the context of the Common European Asylum System, EASO 2019

9 of the International Covenant on Civil and Political Rights (ICCPR) 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 following such procedure as are established by law”. In summary, all the measures that might have an impact on the person’s human rights should be imposed on a **case-by-case basis**.

The principles of **necessity** and **proportionality** should be observed as a core part of the decision to detain a third-country national under EU law. Nevertheless, it should be noted that the principle of necessity, while applying in EU law in relation to the grounds for detention that must be justified, is not taken into consideration by the ECHR. Also, the principles of **non-arbitrariness** and legality provide that detention should be based on grounds for detention established by law.⁷ Moreover, as the European Court of Human Rights has underscored in several judgments (see section 5 below), in practice, domestic authorities shall **effectively verify** and provide with **evidence** whether an alternative measure less coercive than detention is possible.⁸ In this sense, the administrative detention of individuals can take place only in those cases where there are no alternatives.

Despite the legal obligation to consider the use of alternatives to detention, in practice, the widespread use of alternatives is hampered by the scarce availability of tools and for alternatives to detention that could achieve the same goal of detention especially in the context of return procedures – notably to ensure compliance with the migration procedures and prevent absconding. Alternatives to detention are considered to bring **effective advantages compared to detention**, specifically considering their reduced costs as compared to detention, the reduced interference with fundamental rights, and the fact that they can significantly relieve the pressure on national detention systems. Nevertheless, among Member States alternatives to detention remain often unused, and the findings of different actors in the field - the Council

7 The use of detention and alternatives to detention in the context of immigration policies, EMN 2014.

The principles of non-arbitrariness and legality are laid down in the following international law instruments: Art. 9 Universal Declaration of Human Rights (1948), Art. 9 (1) International Covenant on Civil and Political Rights (1966), Art 16(4) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (1990), Council of Europe (PACE), Resolution 1707(2010), 10 Guiding Principles on detention of asylum seekers and irregular migrants, §9.1.5.

8 *A.B. and Others v. France*, No. 11593/12, 12 July 2016, § 124

of Europe,⁹ the UN¹⁰ and the EU¹¹ – while confirming this trend, identified different reasons for this.

The lack of **empirical research** on the practical applicability of alternative measures and which takes into account all related costs, has been identified as one of the main challenges for their implementation. To date, there are several alternative measures, and some information is available on which measures work better than others. However, there is lack of clear evidence-based information on the effectiveness of these measures in achieving compliance with migration procedures and in particular to prevent **absconding**. In this sense, improving the overall quality of the assessment procedures, while boosting a greater legal clarity and objectivity in terms of criteria for assessing such risks could be crucial to ensure the most accurate decision on an appropriate alternative. Another issue identified is linked to the availability of alternatives that correctly match the individual circumstances because they are limited in scale or because the individual concerned cannot meet the requirements, for instance, this is the case of using bail where the lack of financial resources constitutes a limit in applying this scheme.

2 STUDY AIMS AND OBJECTIVES

The 2020 EMN study on detention and alternatives aims to identify similarities, differences, practical challenges and best practices concerning the use of detention and alternatives used by Member States and Norway in the framework of international protection and return procedures.

9 Legal and practical aspects of effective alternatives to detention in the context of migration, *Analysis of the Steering Committee for Human Rights (CDDH)*, 7 December 2017; Commissioner for Human Rights, Human Rights Comment, High time for states to invest in alternatives to migrant detention, 31/01/2017; Parliamentary Assembly, Resolution 2020 (2014), § 8.

10 Special Rapporteur on the human rights of migrants, François Crépeau, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, § 48.

11 European Commission, Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM (2014) 199 final, Brussels, 28.3.2014, p. 15.

It follows the publication in 2014 of the EMN study on “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies” and aims to:

- ▶ Provide a comparative overview of the scale of detention and available alternatives to detention in each Member State in the context of international protection and return procedures and challenges Member States face to implement the alternatives to detention in practice;
- ▶ Give a comparative overview of the process and criteria used by national authorities to assess whether placing a third-country national in detention or instead applying an alternative to detention, in the context of international protection and return procedures;
- ▶ Assess the impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States’ international protection and return procedures. This impact is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.¹²

Categories of third-country nationals considered in the study will include international protection applicants and individuals who have been issued a return decision. The study will focus on detention for asylum/return purposes only and will not include in its scope detention of third-country nationals who have committed a criminal offence. The study will give special attention to the possibility of detaining and/or providing alternatives to detention to vulnerable persons such as minors, families with children, pregnant women and persons with special needs.

The study will consider legal and practical approaches related to provision of detention and alternatives **available during the reporting period January 2015-December 2020**.

¹² Effective Alternatives to the Detention of Migrants, International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network, 2019. Cost-effectiveness is intended as the financial costs of alternatives to detention as compared with the costs of detention, taking into consideration their outcomes (effects). For instance, reducing the length of time a migrant is detained is a factor that might reduce the costs associated with detention.

MAIN RESEARCH QUESTIONS

The study seeks to address two primary questions:

- ▶ To what extent are different options for alternatives to detention available and used across Member States and Norway?
 - ▶ What type of alternatives are currently available and in use across Member States and Norway?
 - ▶ What are the challenges and advantages in the use and implementation of alternatives to detention?
 - ▶ What processes and criteria are used to assess the opportunity to use an alternative instead of detention (provided that grounds for detention exist)?
- ▶ What evidence exists about the impact of different types of coercive measures on the effectiveness of return policies and international protection procedures?
 - ▼ What are the different impacts of detention and alternatives, when considering:
 - ▶ Compliance with relevant migration procedures
 - ▶ Respect for fundamental rights
 - ▶ The cost-effectiveness *ratio*?
 - ▶ Which factors (e.g. personal characteristics such as gender, origin or age; design of the ATD) are found to increase the impact of detention or alternatives to detention?

3 OVERVIEW OF THE EU ACQUIS

Detention and alternatives to detention in the context of international protection procedures

The Reception Conditions Directive (recast)¹³ requires Member States to consider alternatives to detention before subjecting asylum seekers to detention. Recital 15 provides that “applicants [for international protection] may be detained only under very **clearly defined exceptional circumstances** laid down in the Directive and subject to the principles of **necessity** and **proportionality** concerning both to

¹³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

the manner and the purpose of such detention". Under this Directive, Member States may detain an applicant only if other less coercive alternative measures cannot be effectively applied based on a case-by-case evaluation.¹⁴

The Reception Conditions Directive foresees a list of six grounds that may **justify the detention** of asylum seekers:

- ▶ To determine the identity or nationality of the person;
- ▶ To determine the elements of the asylum application that could not be obtained in the absence of detention (in particular, if there is a risk of absconding);
- ▶ To decide, in the context of a procedure, on the asylum seeker's right to enter the territory;
- ▶ In the framework of a return procedure when the Member State concerned can substantiate on the basis of objective criteria that there are reasonable grounds to believe that the person tries to delay or frustrate it by introducing an asylum application;
- ▶ For the protection of national security or public order;
- ▶ In the framework of a procedure for the determination of the Member State responsible for the asylum application.

Moreover, according to Article 18 of the Asylum Procedures Directive,¹⁵ it is not lawful to detain a person solely for the reason that s/he has lodged an asylum application.

To guarantee the **non-arbitrariness** of detention and the respect of fundamental rights of applicants for international protection, the list above is exhaustive. (Article 8). Several procedural guarantees were also put in place, such as the principles of brevity, due diligence and judicial review (Article 9). Further, the recast of the Directive regulates the conditions in detention facilities, such as access to fresh air and communication with lawyers, NGOs and family members (Article 10). Furthermore, according to the Dublin Regulation (Article 28),¹⁶ "when there is a significant risk of absconding, Member States may detain

14 Article 8(2) of the Reception conditions directive (recast)

15 COUNCIL DIRECTIVE 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status and its recast Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

16 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

the person concerned to secure transfer procedures following this Regulation, based on an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.”

Detention and alternatives to detention in the context of return proceedings

The Return Directive¹⁷ allows Member States to detain a migrant only to **prepare his/her return** and/or carry out the **removal process** if the application of less coercive measures is not sufficient. Article 15(4) specifies that detention is only justified as long as there is a **reasonable prospect for removal**. Furthermore, according to Article 15(5), each Member State shall set a limited period of detention, which may not exceed **six months**. Article 15(6) also allows Member States to **extend detention** for an additional 12 months based on either a lack of cooperation by the person concerned or difficulties in obtaining documents from a third country.

Recital 16 of the Return Directive states that: “detention for the purpose of removal should be limited and subject to the principle of proportionality concerning the means used and objectives pursued. Detention is justified only [...] if the application of less coercive measures would not be sufficient”.¹⁸

However, the Return Directive does not impose explicitly Member States to establish national rules concerning alternative schemes, nor does it provide a list of examples of such alternative measures. Nevertheless, Article 7, within the context of voluntary return, lists specific measures that could be imposed on a third-country national benefiting from a period of voluntary departure to avoid the **risk of absconding**, such as regular reporting to the authorities, a deposit of a financial guarantee, submission of documents or the obligation to stay at a specific place. However, these measures cannot be considered alternatives to detention as there is no ground for detention within the context of voluntary return.

17 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

18 C-61/11 relates to the interpretation of Articles 15 and 16 of Directive 2008/115. The court specifically concluded that such Articles must be interpreted as precluding a Member State’s legislation which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

4 RELEVANT CASE LAW FROM THE COURT OF JUSTICE OF THE EU AND ECHR

Obligation to consider alternatives to detention

Given the fact that the detention is an exceptional measure of last resort, States have to examine first alternative measures and resort to detention only if such alternatives are considered as not adequate to achieve the result pursued. The legal obligation to consider alternatives to detention has also been reaffirmed by the Court of Justice of the European Union (CJEU). Specifically, in the case of *El Dridi* the Court stated that removal should be carried out using a gradation of measures which goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility. Only if, in the light of an assessment of each specific situation, the enforcement of the return decision risks being compromised by the conduct of the person concerned, Member States may deprive that person of his/her liberty and detain him/her.

Risk of absconding

Case C-528/15 *Al Chodor* relates to the interpretation of Article 28 of the Dublin III Regulation on the conditions of the detention of asylum seekers pending a transfer to another Member State. The Court affirmed that, some of the provisions of this Regulation necessitate the adoption of measures by national authorities for their implementation. In that sense, Article 2(n) of the Dublin III Regulation requires the criteria to establish a 'risk of absconding' to be 'defined by law'. The CJEU concluded that Article 2(n) and Article 28(2) of the Dublin III Regulation must be interpreted as requiring Member States to establish, in a binding provision of general application, **objective criteria** underlying the reasons for believing that an applicant who is subject to a transfer procedure may abscond. In the absence of that, Article 28(2) is inapplicable, and detention on this ground is unlawful. The Court also noted that the meaning of Article 6 of the Charter of Fundamental Rights should be defined in light of the established case-law of the ECHR, which requires any measure on deprivation of liberty to be accessible, precise and foreseeable.

5 RELEVANT SOURCES AND LITERATURE

EMN Studies and Ad-hoc Queries

EMN synthesis report of the EMN study “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies”, 2014

EMN synthesis report on the EMN study “The effectiveness of Return in EU Member States”, 2017

EMN Ad-Hoc Query on Asylum Proceedings and Detention, Requested by HU EMN NCP on 31 July 2012

EMN Ad-Hoc Query on detention of asylum seekers, Requested by HU EMN NCP on 30 January 2013.

EMN Ad-Hoc Query on detention and removal of minors Compilation produced on 19 January 2015

EMN Ad-Hoc Query on detention and material detention conditions Requested by FR EMN NCP on 21 February 2018

The AHQ 2020.59 on detention of minors requested by BE EMN NCP on 26 August 2020

Other relevant sources

British Institute of International and Comparative Law, “Immigration Detention and the Rule of Law: Safeguarding Principles”, 2013

Council of Europe, Twenty Guidelines on Forced Return, 2005

Council of Europe, “Legal and practical aspects of effective alternatives to detention in the context of migration”, 2017

Council of Europe, “Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results”, 2019

Council of Europe, European Commission and the European Migration Network, conclusion from the Conference "Effective Alternatives to the Detention of Migrants", April 2019

European Asylum Support Office (EASO), Detention of applicants for international protection in the context of the Common European Asylum System, 2019

European Commission, Return Handbook, C(2017) 6505, 2017

European Law Institute, Detention of Asylum Seekers and Irregular Migrants and the Rule of Law: Checklists and European Standards, 2017.

European Union Agency for Fundamental Rights, Detention of third-country nationals in return procedures, 2013

European Union Agency for Fundamental Rights, Alternatives to detention for asylum seekers and people in return procedures, 2015

Odysseus Academic Network, Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation, 2015.

UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, 2011.

UNHCR, Option Paper no 1: Options for governments on care arrangements and alternatives to detention for children and families, 2015.

UNHCR, Compilation of International Human Rights Law and Standards on Immigration Detention, 2018

UNHCR, Beyond Detention - A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019, 2019

6 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary 6.0¹⁹ unless specified otherwise in footnotes.

'Absconding' refers to action by which a person seeks to avoid administrative measures and/or legal proceedings by not remaining available to the relevant authorities or to the court.

'Alternatives to detention' refers to non-custodial measures used to monitor and/or limit the movement of third-country nationals in advance of forced return or deciding on the individual's right to remain in the Member State, such as regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring. In the EU context, pursuant Art. 2(h) of Directive 2013/33/EU (Recast Reception Conditions Directive) and Art. 26 of Directive 2013/32/EU (Recast Asylum Procedures Directive), detention is defined as confinement (i.e. deprivation of liberty) of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of their personal liberty.

'Applicant for international protection' is defined as third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.

'Application for international protection' is defined as a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU (Recast Qualification Directive), that can be applied for separately.

'Asylum procedure': see definition for 'Procedure for international protection'.

'Beneficiary of international protection' is defined as a person who has been granted refugee status or subsidiary protection status.

'Country of origin' is the country or countries of nationality or, for stateless persons, of former habitual residence.

19 Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/interactive_glossary_6.0_final_version.pdf

'Degrading treatment or punishment' refers to treatment that humiliates or debases an individual, showing a lack of respect for, or diminishing, their human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.

'Detention' is defined as a non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented (Source: EMN Glossary 3.0).²⁰

'Detention facility' is defined as a specialised facility used for the detention of third-country nationals in accordance with national law.

'Dublin procedure' is defined as the process for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. (Source: Article 1 of the Regulation 604/2013).

'Examination of an asylum application': see definition for 'Examination of an application for international protection'.

'Examination of an application for international protection': Any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU (Recast Asylum Procedures Directive) and Directive 2011/95/EU (Recast Qualification Directive) except for procedures for determining the EU Member State responsible in accordance with Regulation (EU) No 604/2013 (Dublin III Regulation).

'Forced return' in the global context refers to compulsory return of an individual to the country of origin, transit or third country (i.e. country of return), based on an administrative or judicial act. In the EU context, refers to the process of going back – whether in voluntary or enforced compliance with an obligation to return to: one's country of origin; or a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

'Fundamental rights' are universal legal guarantees without which individuals and groups cannot secure their fundamental freedoms and

²⁰ For the purpose of this study, the criminal detention, which is the deprivation of liberty which applies to a citizen or non-citizen due to criminal charges or convictions, is excluded. The administrative detention which is here considered is an administrative or civil decision taken by (usually) immigration authorities that operates separately to the powers given to the police and criminal courts.

human dignity and which apply equally to every human being regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status as per the legal system of a country without any conditions.

'International protection' is defined in the global context as "the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries" and in the EU context as "protection that encompasses refugee status and subsidiary protection status".

'Irregular migrant' in the global context, refers to a person who, owing to irregular entry, breach of a condition of entry or the expiry of their legal basis for entering and residing, lacks legal status in a transit or host country. In the EU context, a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry as set out in the Regulation (EU) 2016/399 (Schengen Borders Code), or other conditions for entry.

'Procedure for international protection': Set of measures described in the Directive 2013/32/EU (Recast Asylum Procedures Directive) which encompasses all necessary steps for granting and withdrawing international protection starting with making an application for international protection to the final decision in appeals procedures.

'Return' is the movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.

'Return decision' is an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

'Voluntary return' is the assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

A stylized map of Europe is shown in a light purple color. The Czech Republic is highlighted in a darker purple shade. The map is centered on the continent, showing the outlines of major landmasses and the surrounding oceans.

CONTRIBUTION OF THE CZECH REPUBLIC



The aim of the presented study (or in the other words national contribution) is to examine the use of detention and alternatives to detention in the framework of international protection and return procedures in the Czech Republic. The study follows the publication in 2014 of the EMN study on “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies” and covers the reporting period from January 2015 to December 2020.

In the Czech national legislation, the detention in the context of migration is regulated by Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Territory of the Czech Republic and on amendments to certain Acts, as amended (hereinafter referred to as Foreigners Act) and detention in asylum context is regulated by Act No. 325/1999 Coll., on Asylum, as amended (hereinafter referred to as Asylum Act). However, regarding the detention both regulations are closely interlinked as well as the personal scope of the regulations. In general, the decision to detain the third-country national may be issued only when the legal obligations are met and other less coercive measures (i.e. alternative to detention) cannot be applied. As far as the adequacy of detention of an individual and the criteria for placing a foreign national in detention are concerned, the Police of the Czech Republic (partly in cooperation with the Ministry of the Interior) is always responsible for carrying out individual assessment and making decisions on detention of those foreign nationals who are subject to treatment under the Foreigners Act and the Ministry of the Interior (hereinafter also referred to as the MoI) is responsible for this in relation to applicants for international protection.

Regarding the changes in the use of alternative to detention since the last EMN study in 2014, the amendment of Asylum Act from December 2015 provides for new provisions of alternatives to detention in the case of asylum seekers and it stipulates two alternatives to detention: (1) the obligation to reside in the accommodation centre according to the determination of the Ministry of the Interior; and (2) regular self-reporting to the Ministry of the Interior. Aside from that, the amendment of Foreigners Act from December 2015 also expands the number of alternatives to detention and mentions the following alternatives to detention: (1) the obligation of the third-country national to report the place of residence and be there present in order to enable the Police to check whether the third-country national resides on the announced place; (2) the obligation of regular self-reporting; (3) the obligation to reside in the place determined by the Police; (4) financial guarantee.

Among the most commonly used alternatives to detention belongs the reporting obligation where the third-country national illegally residing on the territory or asylum seeker subjected to this alternative to detention is obliged to report himself or herself at regular intervals to the Police office (illegally residing TCN) or to Department for Asylum and Migration Policies of the Ministry of the Interior (asylum authority). Another frequently used alternative to detention then would be the requirement to communicate the address to authorities where the third-country national illegally residing on the territory subjected to this alternative to detention is obliged to report his or her address and any change as soon as possible and no later than next working day to the Police office. The last alternative to detention that is commonly used is the requirement to reside at a designated place, in which case the third-country national illegally residing on the territory or asylum seeker is obliged to reside at the designated place. In all three options of the alternatives to detention the duration is determined on a case-by-case basis taking into account the proportionality of the obligation.

It should be emphasised that the decision-making process on detention of third country nationals in the Czech Republic always includes evaluation of the vulnerability of these persons. In terms of international protection procedures (in accordance with the Asylum Act), unaccompanied minors, elderly people, families, seriously handicapped persons, victims of human trafficking, pregnant women, persons with serious illnesses and persons with mental disorders, etc. (please see the definition of vulnerable person in section 2 of Asylum Act) cannot be under any circumstances detained and alternatives to detention are always imposed. The aforementioned categories of foreign nationals who are subject to treatment under the Foreigners Act are not exempted from detention, however, as have been already mention, the third-country national may be detained only when other less coercive measures cannot be applied and also, the law defines a different treatment for some of these persons. Unaccompanied minors who are younger than 15 years are not subject to detention and are placed in a special Facility for Children-foreigners. An unaccompanied minor can be detained only in exceptional circumstances where the minor is 15-18 years of age and only if the purpose of detention is due to posing a threat to national security and public order and the detention may be in the best interest of the minor concerned. In practice, almost all unaccompanied minors between 15-18 years of age are also placed in a special Facility for Children-foreigners.

The statistics regarding the alternatives to detention are scarce and predominantly are not monitored at national level. However, the Study provides data concerning the following categories: total number of appeals against a decision on detention; total number of third-country nationals in detention; and total number of third-country nationals in alternatives to detention.

National policy and legal framework: development since 2015²¹

This section aims at providing an update about the legal and policy framework on detention and the use of alternatives to detention since 2015 and until December 2020. Questions from 1 to 4 relate to both migration procedures, namely asylum and return procedures. As such, it gives an overview of the main legal and policy changes since 2015 and until December 2020, as well as an overview of the categories of third-country nationals that can be placed in detention in Member States and Norway according to national law and practice.

Q1 Please report any **changes** on the legal and policy framework on **detention concerning both international protection and return procedures** since 2015. Please provide a short description of national provisions, grounds for detention or different typologies of detention.

The detention in the context of irregular migration and asylum is regulated by two legal texts in the Czech Republic. Detention in irregular migration context is regulated by Foreigners Act (No. 326/1999 Coll., as amended) and detention in asylum context is regulated by Asylum Act (No. 325/1999 Coll., as amended). Nevertheless, both regulations are closely interlinked as well as the personal scope of the regulations.

The Foreigners Act provides for several reasons for ordering an administrative detention – detention for the purpose of administrative expulsion, for the purpose of the Dublin transfer, and for the purpose of the handover according to the relevant readmission agreement.

The decision to detain the third-country national for the reasons mentioned above may be issued only **when other less coercive measures (i.e. alternative to detention) cannot be applied**. In

²¹ The latest EMN study on detention and alternatives to detention was published in 2014, therefore the study will cover the period between 2015-2020. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf

case of **detention for the purpose of administrative expulsion**, one of the following reasons shall be met together with the impossibility to impose the alternative to detention:

- ▶ third-country national may be considered a threat to national security and public order;
- ▶ there is a risk that the third-country national might frustrate or impede the execution of the decision on administrative expulsion, in particular by providing false information on identity, place of residence, refusing to provide such information or expressing an intention not to leave the territory or if such intention is apparent from his or her actions;
- ▶ third-country national did not leave the territory within the time-limit given for voluntary departure;
- ▶ there is a serious breaching of conditions that need to be fulfilled for the imposition of an alternative to detention;
- ▶ third-country national has the registration in Schengen Information System.

In the case of **detention for the purpose of the Dublin transfer**, the significant risk of absconding shall be assessed on the basis of the objective criteria laid down by the Foreigners Act. The objective criteria are defined as follows:

- ▶ previous illegal residence on the territory of the Czech Republic;
- ▶ previous avoiding transfer to the responsible Member State;
- ▶ previous absconding;
- ▶ expressing the intent not to respect final transfer decision or such intent is apparent from his or her behaviour.

Asylum Act also provides for the reasons for ordering detention of asylum seekers. Again, **the detention of asylum seekers is generally possible only if other less coercive measures (i.e. alternative to detention) cannot be applied.**

The reasons for detention are as follows:

- ▶ the need for reliable identification or verification of the third-country national's identity;
- ▶ the person in question uses a forged document and the identity is not verified in another way;
- ▶ the third-country national may be considered a threat to national security and public order;

- ▶ the asylum seeker is a subject to Dublin procedure and there is a significant risk of absconding based on the objective criteria such as previous avoiding transfer to the responsible Member State, previous absconding, expressing the intent not to respect final transfer decision or such intent is apparent from his or her behaviour;
- ▶ the application for asylum has been lodged in the detention facility and at the same time, there are legitimate reasons to believe that the application for international protection was made only with the aim of avoiding or withholding the threat of expulsion, extradition or surrender under the European Arrest Warrant for prosecution or imprisonment, although he/she could have applied sooner;
- ▶ the applicant obstructs the proceedings.

Above mentioned legal provisions are valid from December 2015. The changes reflect in particular Reception Condition Directive (2013/33/EU) and jurisprudence of the European Court of Justice - C-528/15 Al Chodor, C-534/11 Arslan and C-357/09 Kadzoev.

Q3 Please report on any **legal and policy changes regarding the use of alternatives to detention** concerning both international protection and return procedures since the last EMN study on detention and alternatives to detention (2014).

The amendment of Asylum Act from December 2015 provides for new provisions of alternatives to detention in the case of asylum seekers. There are two alternatives to detention: (1) the obligation to reside in the accommodation centre according to the determination of the Ministry of the Interior and (2) regular self-reporting to the Ministry of the Interior.

The amendment of Foreigners Act from December 2015 also extends the list of alternatives to detention. There are following alternatives to detention:

- ▶ the obligation of the third-country national to report the place of residence and be there present in order to enable the Police to check whether the third-country national resides on the announced place;
- ▶ the obligation of regular self-reporting;
- ▶ the obligation to reside in the place determined by the Police;
- ▶ financial guarantee.

Q4 Please complete the table below with regard to the **categories of third-country nationals that can be detained** in your (Member) State. Please highlight any changes since then.

	International Protection	
Categories of third-country nationals	Applicants for international protection in ordinary procedures	Applicants for international protection in border procedures
Can third-country nationals under this category be detained?	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes
If yes, what is the legal basis for detention?	<ul style="list-style-type: none"> ▶ the need for reliable identification or verification of identity; ▶ the person in question uses a forged document and the identity is not verified in another way; ▶ the third-country national may be considered as a threat for national security and public order; ▶ the asylum seeker is a subject to Dublin procedure; ▶ the application for asylum has been lodged in the detention facility and at the same time there are legitimate reasons to believe that the application for international protection was made only with the aim of avoiding or withholding the threat of expulsion, extradition or surrender under the European Arrest Warrant for prosecution or imprisonment, although he/she could have applied for sooner; ▶ the applicant obstructs the proceedings. 	idem
Which alternatives to detention are available for this category?	<ul style="list-style-type: none"> ▶ the obligation to reside in the accommodation centre according to the determination of the Ministry of the Interior; ▶ regular self-reporting to the Ministry of the Interior 	idem
What are the (judicial* and non -judicial) authorities involved in the decision about placing the person in detention or instead using an alternative to detention?	Ministry of the Interior, Department for Asylum and Migration Policies	idem

* Please note that the judicial authority responsible for the possible examination of an appeal is Regional administrative court according to the place of residence of the person concerned.

Table 1.
Categories of third-country nationals that can be detained

Return procedures		
Irregular migrants detected in the territory	Persons who have been issued a return decision	Irregular migrants detected at the border
<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Yes **</p>
<ul style="list-style-type: none"> ▶ the third-country national may pose a threat for national security and public order; ▶ there is a risk that the third-country national could frustrate or impede the execution of the decision on administrative expulsion, in particular by providing false information on identity, place of residence, refusing to provide such information or expressing the intention not to leave the territory or if such intention is obvious from his/her actions; ▶ the third-country national did not leave the territory within the time-limit given for voluntary departure; ▶ there is a breaching of conditions imposing for alternative to detention in a serious way; ▶ the third-country national has the registration in Schengen information system; ▶ Dublin transfer or handover according to relevant readmission agreement. 	<p>idem</p>	<p>idem</p>
<ul style="list-style-type: none"> ▶ the obligation of the third-country national to report the place of residence and be there in order to enable Police to check whether third-country national is resided on the announced place; ▶ the obligation of regular self-reporting; ▶ the obligation to reside in the place determined by the Police; ▶ financial guarantee. 	<p>idem</p>	<p>idem</p>
<p>Police of the Czech Republic (specifically its dedicated body: Foreign Police)</p>	<p>Police of the Czech Republic.</p>	<p>idem</p>

** Please note that this is rather a theoretical situation that rarely occurs in practice in the Czech Republic and more common situation is that the entry of the third-country national into the territory of the Czech Republic is refused.

Q5 Is it possible, within the national legal framework of your (Member) State, to detain (or to impose an alternative to detention to) persons belonging to **vulnerable groups**, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

	International protection procedures	Return procedures
Unaccompanied Minors	<input type="checkbox"/> No Alternatives to detention are provided (as mentioned in Table 1 in the case of asylum seekers). It is valid for all categories mentioned below.	<input checked="" type="checkbox"/> Yes but only in exceptional circumstances where the minor is 15-18 years of age and only if the purpose of detention is due to posing a threat to national security and public order. Alternatives to detention are provided (as mentioned in Table 1 in the case of third-country nationals in return procedure). It is valid for all categories mentioned below.
Disabled people	<input checked="" type="checkbox"/> Yes, but only in exceptional circumstances, where it is practically possible and all reception conditions are ensured.	<input checked="" type="checkbox"/> Yes
Elderly people	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
Families with children and single parents with minor	<input type="checkbox"/> No	Yes, nevertheless, children are not detained but accommodated with their parents.
Persons with serious illnesses and persons with mental disorders	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
Victims of human trafficking	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
Pregnant women	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
Other vulnerable persons	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes

Availability and practical organisation of alternatives to detention

This section explores the availability of different types of alternatives to detention for different categories of third-country nationals. For each, it explores the practical organisation of the alternative, including information on the authorities/organisations responsible for managing the implementation of the alternatives; the conditions that must be met by the third-country national to benefit from an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions.

Q6 Please indicate whether any **alternatives to detention for third-country nationals are available in your (Member) State** and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.

Table 2.1
Available alternatives to detention for third-country nationals

	Alternatives to detention	Yes/No
A1	Reporting obligations (e.g. reporting to the police or immigration authorities at regular intervals)	<input checked="" type="checkbox"/> Yes Intervals are imposed by the immigration authorities (MoI* or Police) on an individual basis (usually once a week).
A2	Obligation to surrender a passport, travel document or identity document	<input type="checkbox"/> No
A3	Requirement to communicate the address to authorities (including requesting permission for absences/ changing the address)	<input checked="" type="checkbox"/> Yes Changing the address shall be communicated immediately.

	Alternatives to detention	Yes/No
A4	Requirement to reside at a designated place (e.g. a facility or specific region). Please specify if you also consider house arrest as an ATD.	<input checked="" type="checkbox"/> Yes (usually a reception centre). House arrest is not considered as an ATD.
A5	Release on bail (with or without sureties)	<input checked="" type="checkbox"/> Yes The maximum amount is not provided by law. The amount shall be determined on an individual basis and personal circumstances shall be considered. The amount shall be paid by a third party.
A6	Electronic monitoring (e.g. tagging)	<input type="checkbox"/> No
A7	Release to a guardian/guarantor	<input type="checkbox"/> No
A8	Release to care worker or under a care plan	<input type="checkbox"/> No
A9	Community management programme (i.e. programmes where individuals live independently in the community and are attached to a case manager) or Case management- based programme (where participants are provided with individualised tailored support)	<input type="checkbox"/> No
A10	Other alternative measure available in your (Member) State.	<input type="checkbox"/> No

* the abbreviation MoI stands for the Ministry of the Interior

Q6.1 Amongst the alternatives above indicated, please could you indicate which ones (amongst those defined by law) are the **most used and why?**

The most used alternatives are: A1, A3, and A4.

Imposing the above mentioned alternatives is considered to be the easiest way for both parts (authorities and third-country nationals) and it is also a lesser burden to administration.

Q6.2 Please briefly describe each of the alternatives indicated above.

Description of available alternatives to detention for third-country nationals

A1 – reporting obligations

▶ In what it consists, and maximum duration

The third-country national illegally residing on the territory or asylum seeker subjected to this alternative to detention is obliged to report himself or herself at regular intervals to the Police office (illegally residing TCN) or to the Department for Asylum and Migration Policy of the MoI (asylum authority).

Duration is determined on a case-by-case basis taking into account the proportionality of the obligation.

▶ Legal basis (law, soft law, other guidance)

Foreigners Act (No. 326/1999 Coll., as amended) – section 123b, paragraph 1 letter c)

Asylum Act (No. 325/1999 Coll., as amended) – section 47, paragraph 1 letter b)

▶ Is it used in practice?

Yes

▶ National authorities responsible to administer the alternative

Foreign Police in the case of illegally staying third-country nationals.

Department for Asylum and Migration Policies of the Ministry of the Interior in the case of asylum seekers.

▶ Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)

✘ No

▶ Obligations attached to the granting of the alternative (if relevant)

✘ No

▶ Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)

Detention is a possible consequence, but it is determined on a case-by-case basis. The administrative decision is issued. The decision shall be reasoned.

A3 - Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)

▶ In what it consists, and maximum duration

The third-country national illegally residing on the territory subjected to this alternative to detention is obliged to report his or her address and any change as soon as possible and no later than next working day to the Police office.

Duration is determined on a case-by-case basis taking into account the proportionality of the obligation.

▶ Legal basis (law, soft law, other guidance).

Foreigners Act (No. 326/1999 Coll., as amended) – section 123b, paragraph 1 letter c)

▶ Is it used in practice?

Yes

▶ National authorities responsible to administer the alternative

Foreign Police in the case of illegally staying third-country nationals.

▶ Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)

No

▶ Obligations attached to the granting of the alternative (if relevant)

No

▶ Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)

Detention is a possible consequence, but it is determined on a case-by-case basis. The administrative decision is issued. The decision shall be reasoned.

A4 - Requirement to reside at a designated place (e.g. a facility or specific region)

▶ In what it consists, and maximum duration

The third-country national illegally residing on the territory or asylum seeker subjected to this alternative to detention is obliged to reside at the designated place.

Duration is determined on a case-by-case basis taking into account the proportionality of the obligation.

▶ Legal basis (law, soft law, other guidance)

Foreigners Act (No. 326/1999 Coll., as amended) – section 123b, paragraph 1 letter a)

Asylum Act (No. 325/1999 Coll., as amended) – section 47, paragraph 1 letter a)

▶ Is it used in practice?

Yes

▶ National authorities responsible to administer the alternative

Foreigner Police in the case of illegally staying third-country nationals.
Department for Asylum and Migration Policies of the Ministry of Interior in the case of asylum seekers.

▶ Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)

✕ No

▶ Obligations attached to the granting of the alternative (if relevant)

✕ No

▶ Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)

Detention is a possible consequence, but it is determined on a case-by-case basis. The administrative decision is issued. The decision shall be reasoned.



A5 - Release on a bail

▶ In what it consists, and maximum duration

The maximum amount is not provided by law. The amount shall be determined on an individual basis and personal circumstances shall be considered.

▶ Legal basis (law, soft law, other guidance)

Foreigners Act (No. 326/1999 Coll., as amended) – section 123b, paragraph 1 letter b)

▶ Is it used in practice?

No, it is not used in practice. The above mentioned options (especially reporting obligations or a requirement to communicate the address to authorities) are far more common.

▶ National authorities responsible to administer the alternative

Foreigner Police in the case of illegally staying third-country nationals.

▶ Any partner involved (i.e. NGO, social services, private entities, other governmental actors, etc.)

Yes. The amount shall be paid by a third party.

▶ Obligations attached to the granting of the alternative (if relevant)

No

- ▶ Consequences of non-compliance with the alternative (i.e. does non-compliance with an ATD automatically leads to detention, or is this determined on a case-by-case basis?)

Detention is a possible consequence, but it is determined on a case-by-case basis. The administrative decision is issued. The decision shall be reasoned.

Regarding all alternatives to detention that are described above, the following questions/areas were not included since there was not enough information on the issue or the answer was negative.

- ▶ Was an evaluation conducted (at the national level) to assess the effectiveness of this alternatives to detention? Provide any available online sources/ references/ available information. Please specify how "effectiveness" was defined/which aspects were assessed
- ▶ Mechanisms in place in order to monitor the conditions of the alternative and the treatment of third-country nationals.
- ▶ Mechanisms in place in order to monitor the third-country national's compliance with these conditions (if relevant).

Q7 Please identify any **practical challenges associated with the implementation of each alternative** to detention available in your (Member) State, based on existing studies or evaluations or information received from competent authorities).

Challenge	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	Reporting obligations	Release on a bail*
Availability of facilities related to accommodation (i.e. beds)	Must be stated an address where the individual actually stays.	assessed on an individual basis	-
Availability of staffing and supervision	It is necessary to conduct residence checks.	The foreign national reports himself/herself at the department with around-the-clock services.	N/A
Administrative costs	-	-	-
Mechanisms to control movements of the person	residence check	obligation of regular reporting to the authorities	It is not determined.
Legislative obstacles	-	-	a problem with determining the financial amount and manipulation
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	The foreign national must have an actual address of place of residence.	The foreign national must have a possibility to reside at some place so that he/she could meet the reporting obligation.	The foreign national should have available sufficient amount of financial means.
Other challenges	-	-	-

* Please note that this alternative to detention is not used in practice.

Q8 Please identify any **practical advantage associated with the implementation of each alternative** to detention available in your (Member) State in comparison with detention, based on existing studies or evaluations or information received from competent authorities.

Advantage	Requirement to communicate the address to authorities (including requesting permission for absences/changing the address)	Reporting obligations	Release on bail
Availability of facilities related to accommodation (i.e. beds)	It is provided by the foreign national himself/herself, there is no need for the authorities to provide accommodation.	None.	-
Availability of staffing and supervision	The requirements regarding the staff are significantly lower than in case of detention.	The staff is not overburdened.	-
Administrative costs	no administrative costs	no administrative costs	-
Mechanisms to control movements of the person	residence check	It is not necessary to engage in other activities, for instance to conduct a residence check.	-
Legislative obstacles	-	-	-
Aspects related to the situation of third-country nationals (e.g. limited financial resources, no stable address or community support)	An advantage in comparison to the detention is that the foreign national has a possibility of place of residence.	An advantage in comparison to the detention is that the foreign national has a possibility of place of residence.	-
Other advantages	-	-	-

SECTION 3

Assessment procedures and criteria used for the placement of third-country nationals in detention or alternatives to detention

This section examines the assessment procedures and criteria/benchmarks that are used by Member States and Norway in order to decide whether placing the third country national in detention or to instead use an alternative. The section will also explore how authorities decide which alternative to detention is most suitable to an individual case.

The section starts from the assumption that the grounds for detention exists and does not specifically analyse how the existence of such grounds are assessed.

The section begins with an overview of the steps taken to decide to use an alternative instead of placing the individual in detention. Questions then explore the timing of this assessment, whether an individual assessment is conducted, which authorities are involved in the assessment procedure and which criteria are used to determine whether to use detention or an alternative.

The section will assess how vulnerability factors are assessed when taking a decision for detention and when making an assessment to opt for detention or an alternative.



Q9 Please provide an **overview of when and how the decision** about placing a person in an alternative instead of in detention is made. Please respond considering the following elements:

- i. Is the assessment between detention or alternatives to detention made at the same time as when the grounds for detention are considered or at a different time?
- ii. In what circumstances are the grounds for detention rejected in favour of an alternative to detention?
- iii. Does the procedure vary depending on the categories of third country nationals or their country of origin (e.g. because of the specific situation in the country)?
- iv. Which authorities are involved in the procedure, please specify the respective role (i.e. consultative, decision maker)?

	International protection procedure	Return procedure
i.	At the same time.	At the same time.
ii.	It depends on an individual case. The purpose of the detention may be achieved by a less coercive measure (ATD).	It depends on an individual case. The purpose of the detention may be achieved by a less coercive measure (ATD).
iii.	<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No
iv.	Only the MoI (asylum authority) – decision maker.	Relevant Police department – decision maker.

Q11 Is the possibility to provide alternatives to detention **systematically considered** in your (Member) State when assessing whether to place a person in detention? Please respond separately for international protection and return procedures.

International protection procedure	Return procedure
<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> No
The assessment of the alternatives to detention precedes every decision on detention.	The assessment of the alternatives to detention precedes every decision on detention.

Q12 When there are grounds for authorising detention, which **considerations or criteria** are used to decide whether to place the third-country national concerned in detention or instead provide an alternative?

Criteria	International protection procedures	Return procedures
Suitability of the alternative to the needs of the individual case	<input checked="" type="checkbox"/> Yes The law provides for the case-by-case assessment.	<input checked="" type="checkbox"/> Yes The law provides for the case-by-case assessment.
Cost-effectiveness	<input type="checkbox"/> No	<input type="checkbox"/> No
Nationality or Country of origin/ return (e.g. considerations on the specific situation in the country of origin)	<input type="checkbox"/> No	<input type="checkbox"/> No
Level of the risk of absconding	<input checked="" type="checkbox"/> Yes The criteria are laid down by law.	<input checked="" type="checkbox"/> Yes The criteria are laid down by law.
Vulnerability	<input checked="" type="checkbox"/> Yes Law prohibits the detention.	<input checked="" type="checkbox"/> Yes The detention is generally possible, nevertheless, the vulnerability is considered in order to ensure the adequate reception conditions.
Less-invasive legal measures impacting on human rights	<input type="checkbox"/> No	<input type="checkbox"/> No
Other	<input type="checkbox"/> No	<input type="checkbox"/> No

Q12.1 If **vulnerability** is one of the criteria used to assess whether placing the person under an alternative instead of detention, please **describe how the vulnerability assessment is made** (e.g., the responsible authority and the procedures followed).

International protection procedures

- ▶ Are vulnerability assessments conducted on a case-by-case basis, or is the assessment based on pre-defined categories/groups?

The Asylum Act defines the vulnerable groups – Article 2 par. 1 lett. i) of the Asylum Act.

- ▶ Authorities/organisation conduct the assessment?

Asylum authority (Department for Asylum and Migration Policies of the Ministry of the Interior) and Refugee Facilities Administration (operational organisation responsible for reception conditions and asylum and detention facilities).

- ▶ Procedures followed

No official procedure.

Return procedures

- ▶ Are vulnerability assessments conducted on a case-by-case basis, or is the assessment based on pre-defined categories/groups?

No pre-defined categories, but the Asylum Act is used by analogy. Case-by-case assessment.

- ▶ Authorities/organisation conduct the assessment?

Police authorities.

► Procedures followed

No official procedure.

Q14 Which **legal remedies** are available to the third-country national against a decision to opt for detention/instead of an alternative to detention?

International protection procedures:

The action to the administrative court.

Return procedures:

The action to the administrative court.

Q15 What **support (legal, social, psychological)** is available for migrants during the period when a decision is made about placing the individual in detention or to use an alternative to detention?

International protection procedures:

Asylum seeker has an access to the legal, social, psychological support, medical treatment, necessary reception conditions.

Return procedures:

Legal support, interpretation, psychological support (if necessary), medical treatment, necessary reception conditions.

Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures

This section aims at comparing the different impact of detention and alternatives to detention on the effectiveness of international protection and return procedures.

The impact of placing third-country nationals in detention or in alternatives to detention on the effectiveness of Member States' international protection and return procedures is assessed against three key indicators, namely the extent to which measures: i) ensure compliance with migration procedures (including prompt and fair case resolution, facilitating voluntary and forced returns, reducing absconding); ii) uphold fundamental rights; iii) improve the cost-effectiveness of migration management.

Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these aspects of effectiveness, it is recognised that the type of individuals placed in detention and in alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously.

Ensuring compliance with migration procedures

Q16 Please provide **statistics** available in your country for the latest available year on the **number of asylum seekers** that were placed in detention and in alternatives to detention during the international protection procedures **who absconded**.

The Czech Republic cannot provide the required statistics.

- ▶ If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

N/I

Q17 Please provide any statistics available in your country on **the average length of time needed to determine the status of applicants for international protection** who are held in detention or are in an alternative to detention. Please also indicate the share of decisions which were appealed and the share of those which overturned the initial decision. Those MS who do not place asylum applicants in detention, shall indicate this at the beginning of the question and skip to the next question.

The Czech Republic cannot provide the required statistics.

- ▶ If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

N/I

Q18 Please provide any statistics that may be available in your (Member) State about the number of **irregular migrants** including failed asylum seekers placed in detention and in alternatives to detention during the return procedure, **who absconded**.

Flow number of third-country nationals in detention or in alternatives in the context of return procedures who absconded. Data expressed in absolute figures per year. Data expressed in absolute figures. Reference years: 2017, 2018, 2019 (Please provide data for each year)

	# of irregular migrants in return procedures (including pre-removal)	# who absconded before removal is implemented
Detention (Absolute figures)	0	0
Alternatives to detention	N/A	N/A

Q19 Please provide any statistics that might be available in your country on:

- i. the proportion of voluntary returns and
- ii. the success rate in the number of departures among persons that were placed in detention and in alternatives to detention.

The Czech Republic cannot provide the required statistics.

- ▶ If you cannot provide statistics, do you have any other, even qualitative, information on the above (e.g. data on shares, information on possible trends, qualitative observations, etc.)?

N/I

Q20 Have any **evaluations or studies on the rate of absconding and degree of cooperation** of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State?

International protection procedures

No

Return procedures

No

Q21 Is there any evidence, or empirical observation on **whether detention or alternatives to detention have a greater impact on migration procedures**, (e.g. whether they make return procedure more effective), **depending on certain characteristics of migrants** and specifically country of origin, nationality, family situation, gender, age.

N/I

Upholding fundamental rights

Q22 What **human rights safeguards** are available in detention and in alternatives to detention?

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention
Is access to legal aid ensured? If so, how? Please specify.	The legal aid is provided by the dedicated NGO free of charge and paid by AMIF. Lawyers visit detention facilities regularly (on a weekly basis), third-country nationals in detention also have a possibility to contact them via phone or regular or electronic post. Moreover, some other form of legal aid is possible, depending on the wish of the person in question.	The legal aid is provided by the dedicated NGO free of charge and paid by AMIF. The relevant NGO is obliged to provide the legal aid in its office in regional centres on the territory of CZ on a regular basis (usually once/twice a week). Moreover, other legal aid is possible, depending on the individual situation of the person in question.	The same safeguards.

Safeguards	Detention	Alternatives to detention	Comparison between safeguards provided in detention and in the alternatives to detention
<p>Is the right to be heard ensured during detention/ alternatives to detention? If so, how? Please specify.</p>	<p>Social care is very extensive in the detention. Foreigners can make use of all possibilities from wellbeing counselling to psychological care. Supplementary staff (recreation specialists, housing assistants) are available as well. Any request from foreigner's side is discussed and answered and oral appointment is arranged if necessary. The written communication is possible at all times.</p>	<p>Oral appointment on the request of the person concerned is arranged if necessary.</p> <p>The written communication is possible at all times.</p>	<p>The same safeguards.</p>
<p>Is the right to health (e.g. access to facilities, monitoring of health and wellbeing of the person) ensured? If so, how? Please specify.</p>	<p>Detainees are medically examined before admission. Their health status is noted and monitored further. The staff that is in contact with clients is advised to report any observed medical need to the medical staff. The medical facilities (doctor, nurses) are located within all detention centres with nurses being present 24/7.</p>	<p>The health staff is available 24/7 if the person in question is placed in the reception centre.</p> <p>When the person in question is placed somewhere else than in the MoI facilities, the access to health services depends on the legal position of the person in question.</p> <p>Nevertheless everyone has the right to the urgent health care.</p>	<p>The facilities provide the permanent presence of the medical staff due to the fact that they are closed or semi-closed.</p>
<p>Please add any additional safeguard.</p>	<p>-</p>	<p>-</p>	<p>-</p>

Q23 Have **evaluations or studies** been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention, of mental and physical health)?

No such studies or evaluations have been conducted.

Q24 Please provide any statistics available in your country on **the number of complaints regarding violations of human rights²²** and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention (please quote the relevant case law/decision). Please provide the statistics for 2019 or the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your country.

The total number of appeals against a decision on detention was 224 in 2019.

Improving the cost-effectiveness of migration management.

Q25 Have any evaluations or studies in your (Member) State considered the **cost-effectiveness of using detention or alternatives to detention as part of the asylum procedure** (e.g. length of time to determine an international protection status and executing decisions, costs of procedures, etc.)?

No such studies or evaluations have been conducted.

Q26 Have any evaluations or studies in your (Member) State considered **cost-effectiveness of using detention and alternatives to detention as part of the return procedures** (e.g., the length of time that transpires from issuing a return decision to the execution of the removal, the share of voluntary returns out of the total number of returns, the total number of removals completed, costs of procedures)?

No such studies or evaluations have been conducted.

The presented study examined the issue of detention and alternatives to detention of foreign nationals in the Czech Republic. Specifically, it focused on international protection applicants and individuals who have been issued a return decision. Also, the study put an emphasis on investigating the possibility of detaining and/or providing alternatives to detention to vulnerable persons.

According to Czech legislation, it is generally possible to detain the following categories: applicants for international protection in ordinary procedures; applicants for international protection in border procedures; irregular migrants detected in the territory; and persons who have been issued a return decision and irregular migrants detected at the border (but this is rather a theoretical situation).

The most commonly used alternatives to detention in the Czech Republic are: reporting obligations, requirement to communicate the address to authorities and requirement to reside at a designated place. The aforementioned alternatives are considered to be the easiest option for both parts (authorities and third-country nationals) and they also represent a lesser burden to administration. The alternative that is not used in practice is release on bail due to its enormous administrative burden.

As regards the decision about placing a person in an alternative instead of in detention is made, the assessment between detention or alternatives to detention is made at the same time as when the grounds for detention are considered and the circumstances that would motivate the rejection of detention in favour of alternative to detention are dependent on individual case assessment. Also, the procedure does not vary depending on the categories of third country nationals or their country of origin. The two authorities that are involved in the procedure are the Ministry of the Interior in case of the international protection procedure and the relevant Police department in case of the return procedure. After the decision about placing the individual in detention, he/she has an access to the legal, social, psychological support, medical treatment and all necessary reception conditions are met.

Regarding the issue of ensuring human rights safeguards in detention and alternative to detention, the legal aid is provided by the dedicated NGO free of charge and funded by AMIF. Also, any request from foreigner's side is discussed and answered and an oral appointment is arranged if that is deemed necessary, provided that the written communication is possible at all times. In these instances, there is no difference between

ensuring the human rights mentioned to TCNs placed in detention facilities or alternatives to detention. As far as the right to health is concerned, in detention facilities clients undergo a medical examination before admission to the facility and their health is then monitored further. The medical facilities are located within all detention centres with nurses being present 24/7, which is the main difference with the alternatives to detention, specifically those alternatives where the person in question is placed somewhere else than in the MoI facilities and the access to health services depends on the legal position of the person in question. However, in the Czech Republic everyone has the right to the urgent health care.

The Czech Republic has not yet conducted any study or evaluation on the impact of detention and alternatives to detention on the fundamental rights of the third-country national as well as there has been prepared no study that would examined cost-effectiveness of using detention or alternatives to detention as part of the asylum or return procedures.

As concerns the available statistics at the national level, most requested statistics could not have been provided due to the fact that this information is not statistically tracked, except for the data on the total number of appeals against a decision on detention; total number of third-country nationals in detention; and total number of third-country nationals in alternatives to detention.

Table 1
Statistics on number of third-country nationals in detention and provided alternatives to detention per category

Please note that the Czech Republic collects data only on the following categories.

	2014	2015	2016	2017	2018	2019	Source / further information
Total number of third-country nationals in detention	N/A	2702	553	634	682	720	The Directorate of Foreign Police Service
Total number of third-country nationals in alternatives to detention	N/A	N/A	N/A	75	92	76	The Directorate of Foreign Police Service

The content of this study

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