

CROSSING A RED LINE

How EU Countries Undermine
the Right to Liberty by
Expanding the Use of Detention
of Asylum Seekers upon Entry:
Case Studies on Bulgaria, Greece,
Hungary, and Italy

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EXECUTIVE SUMMARY

The objective of this research was to explore how **Bulgaria, Greece, Hungary and Italy** undermine the right to liberty of asylum seekers upon entry. Besides thoroughly documenting the worrisome trend towards *de facto* detention, this study aims to provide EU organs with the necessary knowledge to tackle attempts at weakening the fundamental rights of a group of people seeking refuge in Europe as a result of violence and turmoil in their home countries. Furthermore, it aims to raise awareness within the international community about the rampant use of *de facto* detention on the EU's external borders, and the grave human rights violations which this entails.

The research was conducted in 2018. Research methodology included desk research, monitoring visits to places of detention, testimonies from detained asylum seekers and interviews with relevant stakeholders. The research was coordinated by the Hungarian Helsinki Committee (HHC), with the participation of the Italian Council for Refugees (CIR), European Council on Refugees and Exiles (ECRE), Foundation for Access to Rights (FAR), Greek Council for Refugees (GCR) and Global Detention Project (GDP) as project partners.

The main findings of the study are the following:

- The use of detention upon entry increased in 2015 with the increase in the number of migrant arrivals, but it has continued to this date despite a significant decrease in asylum applications in Bulgaria, Hungary and Italy.
- In 2017, 73.5% of asylum seekers were detained in Hungary (an increase from 2.9%) and 59% in Bulgaria, while the average length of detention has also increased in both countries.
- In 2017 the use of migrant detention increased in Italy by 25% and in Greece by 75%.
- The research revealed **various practices of de facto detention**, such as “protective custody” of children in Greece, hot spot

detention in Greece and Italy, transit zone detention in Greece and Hungary, detention during pushback in Greece, detention on boats in Italy and detention in pre-removal centres in Greece. The common element in these forms of detention is that “*de facto* detention” occurs when individuals are deprived of their liberty in the absence of a detention order. Their confinement is not classified as detention under domestic law and their only possibility of release is by leaving to another country. Additionally, asylum seekers detained in these establishments have no procedural guarantees and no opportunity to seek judicial review of their detention. The research also looked into the official detention of asylum seekers upon entry, where the **legal grounds used to detain asylum seekers remain problematic**. These include “immigration detention of asylum seekers upon entry” and “short-term detention” in Bulgaria, and a “pilot project on detention upon arrival” in Greece.

- The increased frequency with which asylum seekers are detained upon entry is motivated by a range of different practical, political, and legal considerations. It has been used as a general response to cope with unprecedented pressure on the reception and asylum processing systems in all of the countries studied (including as a response to the lack of open reception accommodation facilities in Bulgaria and Greece). Detention has also been promoted as a security measure (e.g. against terrorism) and used as a means to prevent asylum seekers from crossing external borders in a bid to gain political support for the ruling government (in Bulgaria, Hungary and Italy). Finally, as in the case of Greece and Italy, the increased rate of detention of asylum seekers at the border has also been the product of political action at the EU level – namely the need to enforce the terms of the EU-Turkey statement – as well as pressure exerted by the European Commission to ensure the ongoing operation of the Dublin system.
- **No clear evidence confirms that detention reduces the flow of arrivals as a response to an increased migratory pressure.**

While the Hungarian solution of automatically detaining almost all asylum seekers for the duration of their asylum procedure reduces asylum seekers' secondary movement across the EU, the flagrant infringement of their right to liberty cannot be balanced against the policy objective of halting such movements. Instead, the use of *de facto* detention can be counter-productive to refugee integration, and can contribute to the increase in secondary movement of beneficiaries of international protection towards Western Europe.

- The research shows that **conditions in several detention centres examined are not adequate**. The Committee for the Prevention of Torture (CPT) found conditions in Busmantsi and Lyubimets detention centres in Bulgaria to be very poor. Fylakio pre-removal centre in Greece has been characterized by Human Rights Watch as exceptionally poor, and the Moria hotspot in Greece was labelled "the worst refugee camp in the world" by the BBC. According to the CPT, the environment of the transit zones Röszke and Tompa in Hungary cannot be considered adequate for the accommodation of asylum seekers for prolonged periods, even less so when these include families and children. The Taranto hotspot in Italy was closed between March and June of 2018 because of precarious conditions. Similarly, the Lampedusa hotspot in Italy was partially closed between March and August 2018 due to an arson incident, which was the result of structural deficiencies and poor reception conditions.
- In certain cases, structural difficulties put an end to *de facto* detention practices, since systems could no longer cope with related challenges (e.g. most of the hotspots in Italy and Greece ceased to operate as closed centres). In December 2018, Italy adopted a new law that regularises *de facto* detention for asylum seekers at hotspots. Bulgaria also enacted legislative amendments to remedy *de facto* detention practices: it introduced a new legal regime of "short term detention" to regularise the practice of *de facto* detaining irregular migrants in the so-called "Distribution Centre" in Elhovo. While it is definitely to be welcomed that the practice of *de facto* detention is being abolished, research shows that the compatibility of this form of detention, believed to be used for purely administrative convenience, with international law is questionable, to say the least. On the contrary, in Hungary the authorities still refuse to admit that transit zones are places of

detention, despite several statements from UN bodies, the CPT and ECtHR Ilias and Ahmed judgement (not final).

- **Domestic litigation brought success in Bulgaria**, where the Supreme Administrative Court ordered the immediate release of an asylum seeker from immigration detention, stating that the submission of an application for international protection is a statutory fact that puts an end to immigration detention. In another case, the Sofia City Administrative Court found short-term detention unlawful, as detention did not pursue a legitimate purpose and was not proportionate. In Greece, challenging the geographic restriction on the islands brought only partial success, as despite the Council of State decision annulling the restriction, a new administrative decision signed by the new Director of the Asylum Service imposed *ad novo* a general geographical restriction to all asylum seekers on the islands only few days later. Several successful cases were reported challenging the detention of asylum seekers in the Evros region, pending their transfer to Reception and Identification Centres. In Hungary, domestic courts on several occasions declared unlawful the placement of applicants in the transit zone and ordered their release.
- **Litigation at the European Court of Human Rights** regarding problematic forms of detention has already brought important results. In *Khlaifia and Others v. Italy*, the *de facto* detention of migrants on a boat was found to be in breach of Articles 5(1), 5(2) and 5(4), and in *Ilias and Ahmed v. Hungary* (not final) the applicants' confinement in the Röszke transit zone was found to have amounted to detention, in breach of Articles 5(1) and 5(4). Several pending cases are relevant for this research, for example *Sh. D. v. Greece* addressing protective custody of children, *Ilias and Ahmed v. Hungary*, which is pending at the Grand Chamber, and several other Hungarian cases concerning the detention of asylum-seeking families, unaccompanied minors and single asylum seekers in the transit zones. *Alagie Trawalli and Others v. Italy*, meanwhile, concerns the detention of unaccompanied minors in the Taranto hotspot.
- Despite the recast Reception Conditions Directive providing extensive grounds for the introduction of a specific detention regime for asylum seekers, certain countries examined in this study deemed it necessary to resort to *de facto* detention instead,

depriving certain asylum seekers of all detention-related human rights safeguards. For example, Hungary rarely uses detention based on the recast Reception Conditions Directive, but *de facto* detains almost every asylum seeker entering the country. In Bulgaria, the introduction of detention under the Reception Conditions Directive also did not lead to discontinuation of the

controversial practice of detaining asylum seekers as removable irregular migrants prior to giving them access to the asylum procedure. **Any motives behind the use of these problematic detention practices despite the existence of a dedicated legal framework cannot be accepted as a legitimate basis for the infringement of asylum seekers’ right to liberty.**

RECOMMENDATIONS

The authors of this report would like to endorse the recommendations advanced in the ECRE study on Asylum and *de facto* detention in Europe – Boundaries of Liberty:¹

1. Where European countries prevent asylum seekers from leaving the transit zones or other border facilities to access other parts of their territory, European countries should legally qualify those measures as deprivation of liberty.
2. The Council and European Parliament should clarify in the reform of the recast Reception Conditions Directive that stay in a transit zone or a border facility amounts to deprivation of liberty where the applicant is not allowed to freely enter and exit the facility into the territory.
3. Where European countries resort to restrictions on freedom of movement or deprivation of liberty, in accordance with domestic law and human rights law requirements, they should inter alia: (a) conduct an individualised assessment of each case to establish necessity and proportionality; (b) consider the application of alternatives to detention; (c) communicate a

duly motivated detention decision to the individual concerned; (d) specify the modalities of effective remedy before a court; (e) eliminate restrictions imposed upon access of legal representatives, UNHCR, UNWGAD and specialised civil society organisations.

The authors of this report also

4. Oppose the introduction of a mandatory border procedure under Article 22 of the recast Return Directive, as it exacerbates the systematic use of detention at the border, contrary to international and EU human rights law standards.²

And finally

5. The notion of “controlled centres” put forward by the Commission and some Member States remains ambiguous and untested in practice, and risks increasing situations of *de facto* detention at the border. The concept should therefore be opposed.³

1 ECRE, Boundaries of liberty: Asylum and *de facto* detention in Europe, 2017, <http://www.asylumineurope.org/sites/default/files/shadow-reports/boundariesliberty.pdf>

2 See also ECRE Comments on the Commission proposal for a recast Return Directive COM(2018) 634, pp. 22-26, <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-Commission-Proposal-Return-Directive.pdf>.

3 See also ECRE Comments on the Commission proposal for a Regulation on the European border and coast guard (COM(2018) 631 FINAL), pp. 8, 9, <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-EBCG-proposal.pdf>.

I. INTRODUCTION AND METHODOLOGY

On 15 November 2018, the UN Working Group on Arbitrary Detention (UNWGAD) took the unprecedented step of suspending an official visit to Hungary after its members were denied access to the Röszke and Tompa “transit zones.” These *de facto* detention centres, located at the border with Serbia, are used to systematically detain migrants and asylum seekers – including children – crossing into Hungary. The Hungarian government has claimed that the transit zones are not places of detention and thus do not fall under the UNWGAD mandate. The Working Group, a body of experts established by the UN Commission on Human Rights to investigate all forms of arbitrary detention, took a starkly different view, stating that there “can be no doubt” that the situation at Röszke and Tompa “constitutes deprivation of liberty in accordance with international law.”⁴ Because of the Hungarian government’s refusal to grant access to these centres, the UN experts determined that they would be unable to fulfil their mandate and were obliged to cancel their visit.

The UNWGAD’s experience in Hungary compellingly illustrates what follows the erosion of a principle that lies at the heart of liberal democracy and which is ostensibly espoused by all Member States of the European Union: *the right to liberty*. The UN Working Group and other bodies like it were created to ensure that this right remains protected because, as the UNWGAD said after suspending its visit to Hungary, it “is vital for the protection of the human rights in a country governed by the rule of law.” In some cases, like Hungary, officials adopt a misleading narrative that seeks to shield detention practices from scrutiny and prevent non-citizens from enjoying their legal rights. Other countries have adopted laws that acknowledge “transit zones” as sites of detention. In all cases, what we are witnessing is an effort to weaken the fundamental rights of a group of people who have sought refuge in Europe because of the violence and turmoil in their home countries.

This report shines a spotlight on these efforts in four EU countries – **Bulgaria, Greece, Hungary and Italy** – focusing particular attention on the deprivation of asylum seekers’ liberty upon arrival.

A primary focus of this research was to assess detention situations, like at Hungary’s Röszke and Tompa facilities, determining where these practices are taking place and the impact they have on refugees and asylum seekers. “**De facto detention**” occurs when individuals are deprived of their liberty in the absence of a detention order. Their confinement is not classified as detention under domestic law, and their only possibility of release is by leaving to another country. This kind of detention is contrary to basic legal norms because it occurs in the absence of any examination of a person’s individual circumstances or a specific legal justification, and is not based on a vigorous assessment of either necessity⁵ or proportionality.⁶ Additionally, asylum seekers detained in these establishments have no procedural guarantees and no possibility for judicial review of their detention. As a consequence,

4 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23879&LangID=E>

5 Necessity: to determine on the basis of an individual assessment, whether detention is justified in relation to one of the grounds of detention (in order to attain the legitimate objectives pursued).

6 Proportionality: to determine if other less coercive alternative measures can be applied effectively.

- 7 Article 31(1) of the Refugee Convention stipulates that states should not impose penalties related to unauthorized entry or presence on refugees who come directly from a territory where their life or freedom was threatened or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The term “penalties” tends to refer to a penal detention. Article 31(2), which is particular relevance to this report, provides that states should not apply restrictions to the movements of such refugees other than those which are necessary, and such restrictions should only be applied until their status in the country is regularized.
- 8 For a fuller account of relevant treaty body jurisprudence, see Mariette Grange and Izabella Majcher, “Immigration detention under international human rights law: The legal framework and the litmus test of human rights treaty bodies monitoring,” in *Challenging Immigration Detention: Academics, Activists, and Policy-makers* (Springer, 2017), <https://www.globaldetentionproject.org/challenging-immigration-detention-academics-activists-and-policy-makers>.
- 9 Under article 8(3) of the Directive, asylum seekers can be detained to determine or verify their identity or nationality; to determine those elements of asylum application which could not be obtained in the absence of detention, in particular in case of a risk of absconding; in order to decide on their right to enter the territory; if they apply for asylum while being subject to pre-removal detention; on account of threat to national security or public order; or within Dublin transfer proceedings.
- 10 Only if they represent a significant risk of absconding, pursuant to article 28(2) of the Dublin Regulations.
- 11 Under article 15(1), they can be detained if they pose a risk of absconding, and if they hamper preparation for their return.

they are left without an effective opportunity to challenge the imposed restrictions and are therefore arbitrarily detained. The report shows that *de facto* detention of asylum seekers upon arrival has been used in **Greece, Hungary and Italy**.

In **Bulgaria**, while detention upon arrival is common, this type of detention is not *de facto* as it is officially recognized as deprivation of liberty. **Greece** is also pursuing a practice of official detention upon entry for certain nationalities. Therefore, in addition to the detention centres, the report also discusses centres that are officially recognized as depriving asylum seekers of their liberty upon entry, but which nevertheless remain problematic because of the legal grounds on which asylum seekers are detained. The report did not look into other types of detention of asylum seekers (e.g. detention based on the recast Reception Conditions Directive).

This report is based on the national reports prepared by the respective project partners, using a common methodology comprising desk research, monitoring visits to places of detention, testimonies taken from detained asylum seekers and interviews with relevant stakeholders. National reports were based on a structure developed in advance by the Hungarian Helsinki Committee.

The research took place in 2018. It covers the trend towards increased use of detention upon entry (Chapter II), describes the forms of detention upon entry (Chapter III) and the underlying rationale (Chapter IV). It then goes on to describe the conditions in selected detention centres, using quotes from the testimonies taken (Chapter V) and reflects upon the most important case law regarding the detention centres researched for this study (Chapter VI).

The assessments were made taking into account the relevant legal framework within which immigration-related detention should take place, as this is established in international and regional human rights and refugee law, as well as in EU legislation. At the international level, the UN Refugee Convention has provisions that circumscribe the detention of refugees and asylum seekers⁷ and numerous UN human rights conventions contain relevant provisions, including the International Covenant on Civil and Political Rights (ICCPR),

the Convention on the Rights of the Child (CRC), the Convention against Torture (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Committees of experts called “treaty bodies” monitor the implementation of these human rights conventions on a regular basis (approximately once every four years) and issue specific recommendations (“concluding observations”).⁸ Annex I of this report lists relevant recommendations from these bodies concerning the four countries covered in this report going back several years. In addition to these treaty bodies, there are several thematic human rights mechanisms, such as the UN Working Group on Arbitrary Detention, which are mandated to investigate specific types of human rights violations including individual cases.

At the regional level, article 5(1) of the European Convention on Human Rights provides that no one may be deprived of his or her liberty, except in limited circumstances and in accordance with a procedure prescribed by law. In addition, there is the European Convention for the Prevention of Torture, which created the Committee for the Prevention of Torture (CPT) to provide “a non-judicial preventive mechanism to protect persons deprived of their liberty against torture and other forms of ill-treatment [which] complements the judicial work of the European Court of Human Rights.”

In the EU legal order, the EU Reception Convention Directive provides specific grounds on which a Member State may detain people in asylum procedures.⁹ Additionally, the Dublin Regulation provides for the detention of asylum seekers subject to Dublin transfer under specific grounds¹⁰ and rejected asylum seekers may be detained during return proceedings under the provisions of the Returns Directive.¹¹

Annex II of the report comprises a series of detention data profiles produced by the Global Detention Project in collaboration with each of the partners on this project. These profiles provide a snapshot of key policies and practices in all countries and detention centres assessed in this report and include data across several key dimensions of detention regimes, including each country’s relevant domestic laws, international legal obligations, institutional settings, and statistical trends.

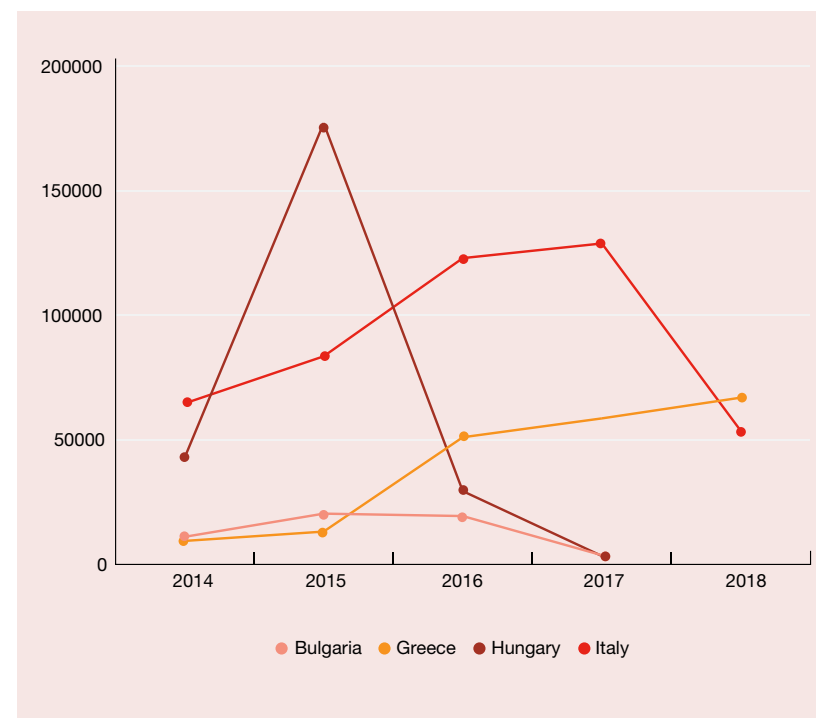
II. INCREASED USE OF DETENTION FOR ASYLUM SEEKERS UPON ENTRY

Following the Arab Spring uprisings of 2010-2011 there has been an unprecedented migratory flow towards Europe, with **Greece** and **Italy** representing major points of entry by boat for asylum seekers. With regard to **Italy**, a new wave of migration started in 2014 from Northern Africa and the Middle East that brought a significant increase in arrivals, roughly ten times higher than the average numbers recorded in the first decade of the 2000s. Asylum applications reached a peak in 2017, when 128 850 people applied for asylum in **Italy**.¹² **Bulgaria** and **Hungary** also faced an unprecedented increase in arrivals in 2015, with 177 135 (414% increase) asylum applicants registered in Hungary and 20 390 (184% increase) applicants registered in **Bulgaria**.¹³ While in **Bulgaria**, **Hungary** and **Italy** the number of asylum applications has fallen, **Greece** received its highest ever number of asylum applicants in 2018 (66 970).¹⁴

The countries examined in this study dealt with this unprecedented increase in arrivals in different ways, but the research shows a common denominator for **Greece**, **Hungary** and **Italy**, namely the use of *de facto* detention, while in **Bulgaria** the increase in arrivals triggered an increase in the use of immigration detention for asylum seekers.

Although the number of both irregular entrants and asylum seekers in **Bulgaria** and **Hungary** fell sharply in 2017, the use of detention increased significantly in **Hungary** – where 73.5% of asylum seekers were detained over the course of the year – and it remains the main tool of migration management in Bulgaria. The main nationalities of detained asylum seekers in both countries are Syrians, Afghans and Iraqis.

Asylum applicants (2014-2018) in researched Member States:¹⁵



- 12 http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.
- 13 http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en.
- 14 http://asylo.gov.gr/en/wp-content/uploads/2019/01/Greek_Asymylum_Service_Statistical_Data_EN.pdf
- 15 http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en, statistics for Italy for 2018 are available on: <https://www.csm.it/documents/21768/121438/REPORT+MINISTERO+INTERNO+FINO+AL+28.12.2018/9837d48e-bd30-59c8-884b-37dd46662a12?version=1.0>, statistics for Greece for 2018 are available on: http://asylo.gov.gr/en/wp-content/uploads/2019/01/Greek_Asymylum_Service_Statistical_Data_EN.pdf.

Statistics on immigration detention of asylum seekers in Bulgaria:

	A	B	C	D	E	F
	Apprehended irregular migrants	Detained irregular migrants	% of detained irregular migrants (B/A)	Asylum applications	Asylum applications in immigration detention	% of those detained that applied for asylum (E/B)
2017	2 989	3 332	111,5% ¹⁶	3 700	1 970 (53%)	59%
2016	18 844	18 391	98%	19 418	16 382 (84%)	89%
2015	34 056	27 724	81%	20 391	26 533 ¹⁷ (130%)	96%

Statistics on detention of asylum seekers in Hungary:

	A	B	C	D
	Asylum applicants	Asylum detention	Detention in transit zones	% of asylum seekers detained
2015 + 2016	206 567	5 014	962	2,9%
2017	3 397	391	2 107	73,5%

Furthermore, the average length of detention has increased in **Bulgaria**, while in **Hungary** *de facto* detention in the transit zones now lasts for the whole duration of the asylum procedure. The table above also clearly shows that with automatic detention of almost all asylum seekers in the transit zones in **Hungary** since 28 March 2017, the issuance of formal detention orders (so called “asylum detention”) has fallen drastically.

16 The percentage does not include only newly arrived migrants.

17 According to the official statistics, SAR registered 20 391 asylum seekers in 2015. In its reply to FOI request, the Ministry of Interior has provided the number of outgoing asylum applications from the detention centres that exceeds the number of registered asylum claims. These applications have been submitted, but it seems that not all of them were registered.

18 Source: Ministry of the Interior, Decision to grant access to public information No.812104-158 of 29.6.2018.

19 This centre closed down indefinitely in February 2017.

Average length of immigration detention in Bulgaria:¹⁸

	Special Homes for Temporary Accommodation of Foreigners (SHTAF) – Sofia	SHTAF - Lyubimets	Distribution Centre in Elhovo ¹⁹
2015	25 days	24 days	7 days
2016	20 days	15 days	14 days
2017	59 days	52 days	20 days

Max. time of detention in transit zones in Hungary:

15 September 2015 – 27 March 2017	28 days
from 28 March 2017	no limit

Italy also intensified its use of measures for the deprivation of liberty, particularly in 2017. Although the decrease in the number of arrivals registered in 2017 has entailed a corresponding decrease in hotspot admissions (65 295 in 2016 and 40 534 in 2017), at the same time there has been a growth in the number of persons transited through detention centres (+ 36 %) and forcibly repatriated (+25 %), and an increase in the number of detention centres throughout Italian territory.²⁰

Under pressure from other EU member states and the European Agenda on Migration, the use of immigration detention in Greece has been steadily increasing. Between 2016 and 2017, the population of detained immigrants increased by 73%.²¹ *De facto* detention of migrants has been a common practice in Greece since the number of migrant arrivals began to increase. “Official detention” has also been on the rise: the number of third-country nationals detained in pre-removal centers under detention orders in 2017 was 25 810 (compared to 14 864 in 2016), while the increase has been much higher for asylum seekers: 9 534 in 2017 compared to 4 072 in 2016.²² Moreover, there were eight active pre-removal detention centers in Greece at the end of 2017, compared to six active facilities at the end of 2016.”²³

20 National Guarantor for the Rights of persons detained or deprived of their Liberty, Report to the Parliament, June 2018, p. 226.

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

22 AIDA Country Report on Greece (2017 update), op cit (n 3), page 146.

23 ibid, page 18.

III. FORMS OF DETENTION USED UPON ENTRY

24 See, for example, Cordelia Foundation, Hungarian Helsinki Committee, Foundation for Access to Rights and Assistance Centre for Torture Survivors, *From Torture to Detention: Access of Torture Survivor and Traumatized Asylum Seekers to Rights and Care in Detention*, January 2016, pp.8-9, http://www.farbg.eu/wp-content/uploads/2016/07/3.2.-EN-From_torture_to_detention.pdf.

25 For example, the following evidence was collected by FAR in 2016 and published in the Analytical report on the exercise by detained immigrants of the right to be heard in Bulgaria: *"The average length of the period between the submission of an application for international protection and registration by the SAR is as follows: For the interviewed Pakistani nationals: four months and five days. This number includes four unaccompanied minors who had to wait three months on average to be registered by SAR after submitting applications for international protection; For the two interviewed Syrian nationals: two months and twelve days; For the interviewed Lebanese national: one month; For the interviewed Turkish national: three months; For the interviewed family with a nine-year old child from Iran: one month; For the two cases of Iraqi nationals, including single father with a seven-year old child: five months; For the interviewed Moroccan national: one month; For the 3 interviewed Afghani nationals, including 2 unaccompanied minors: two months."*

26 See Articles 5 and 45(b) of LAR.

27 State Gazette No. 97 of 6 December 2016.

28 Sofia City Administrative Court, Judgment of 17 May 2018 in case No.4050/2018.

29 <http://www.farbg.eu/bg/elhovo/>.

30 The Distribution Centre in Elhovo was established by Government Order No Iz - 1887/25.09.2013. Its management was delegated to the Director of Migration Directorate at the Ministry of Interior. However, the possibility to establish such a "Distribution Centre" is not envisaged neither in the Law on Foreign Nationals in the Republic of Bulgaria, nor in the Law on Asylum and Refugees.

Several forms of detention upon entry were identified in Greece, Hungary and Italy, mainly taking the form of *de facto* detention, while in Bulgaria the form of detention upon entry is "official detention". The different forms will be described below for each country.

A. BULGARIA

The legal framework of immigration detention in Bulgaria is based on two different branches of law: the Law on Foreign Nationals in the Republic of Bulgaria (LFRB) and Law on Asylum and Refugees (LAR). Bulgaria formally introduced a specific detention regime for asylum seekers in October 2015 (which entered into force on 1 January 2016), but in practice asylum seekers were detained both before and after the introduction of this legislation as irregular migrants in a return procedure.²⁴ The introduction of a special regime for the detention of asylum seekers under the EU Reception Conditions Directive did not lead to the discontinuation of the practice of detaining asylum seekers as removable irregular migrants prior to giving them access to the asylum procedure.²⁵ Moreover, the practice of examining an application for international protection while the person in question is detained for the purpose of removal under the LFRB was not abandoned, but even reinforced, despite being unlawful.²⁶

In December 2016, Bulgaria further introduced a third type of administrative detention of foreign nationals, which is envisaged neither in EU law, nor in the European Convention on Human Rights: the so-called "short-term accommodation" under Article 44(13) of the LFRB,²⁷ whose purpose by law is to establish the identity of the person and decide on subsequent measures to be taken. In the only judgment on "short-term" detention so far, the national court stated that this form of detention is the "initial apprehension by law-enforcement authorities, regulated by national legislation" in the meaning of Recital 17 of the EU Return Directive.²⁸ However, according to the FAR organisation, it seems that this is simply a detention for administrative convenience.²⁹

According to the terminology adopted in Bulgarian legislation, foreign nationals who are subject to removal are "*coercively accommodated*" under the LFRB. Furthermore, irregular migrants whose identity needs to be established may be subjected to "*short-term accommodation*" under the LFRB. The LFRB does not use the term "*detention*", although in practice the law refers to deprivation of liberty on administrative grounds. The places where foreign nationals are "accommodated" under the LFRB are called "*Special Homes for Temporary Accommodation of Foreigners*" (SHTAF). These are the official names of immigrant detention centres in Bulgaria. Likewise, asylum detention under the LAR is named "*temporary accommodation*" in a "*closed-type centre*". The detention centre in Elhovo was named a "*Distribution Centre*".³⁰

The misleading terminology used in Bulgarian law makes it even more important to highlight that in this type of “accommodation” people are deprived of a fundamental human right – the right to liberty.³¹ The buildings in which people are detained have the infrastructure of a prison: high walls, barbed wire, grills, security guards, cameras and restricted access. However, unlike prisoners, who have the right to go on home leave for good behaviour, detained immigrants are not allowed to leave the centre. They do not know how long they will be detained: some cases extend for weeks, others for months or even years.³² It is noteworthy that the European Parliament amended the term “temporary custody”, used in the European Commission’s proposal for the Return Directive, to “detention”. This demonstrates official recognition of the realities in practice “given the deprivation of freedom it entails and its duration, up to six months, which is far from temporary”.³³

In Bulgaria there are three immigration detention centres: one is in the Busmantsi neighbourhood of the capital Sofia with a capacity of 400 persons, another is in the town of Lyubimets with a capacity of 300 persons and the third is the “distribution centre” in the town of Elhovo. Since 29 January 2017 the distribution centre in Elhovo has been undergoing “reorganizational and repair activities”³⁴ and all foreign nationals are redirected to the other two detention centres of the Migration Directorate (Busmantsi and Lyubimets).



Asylum seekers can therefore be detained upon entry under the following three regimes:

- immigration detention in a return procedure
- asylum detention
- short-term detention

The first and the third form of detention fall under the scope of this research and will therefore be described in detail below.

Immigration detention of asylum seekers upon entry

Upon entering the country, apprehended migrants are detained for the purpose of removal. According to Article 20(2) of the Ordinance on Immigrant Detention Centres,³⁵ “a foreign national shall be released from the immigrant detention centre when an application for international protection under the LAR has been filed and the grounds provided for in Article 44(12) of the LFRB no longer exist”. According to Article 44(12) of the LFRB, immigration detention is not to be discontinued when there are serious grounds to believe that the foreign national has filed a subsequent application for international protection with the sole purpose of delaying his/her return. In the latter case the extension of detention can be appealed in court. This legislative solution is based on the rule that when a detained foreign national files an application for international protection, the return process is abrogated by law and detention for the purpose of return is no longer justified. Therefore, the asylum seeker must be released from immigration detention.

In practice, however, the law is often breached by the Bulgarian authorities, and asylum seekers are left in immigration detention even after they have been formally admitted to the asylum procedure. In 2016 FAR asked the Ministry of the Interior how many detained foreign nationals, who find themselves at the immigration detention centres in Sofia and Lyubimets and had filed a first application for international protection, were registered as asylum seekers by the State Agency for Refugees (SAR). According to the answer³⁶ received, as of 18 July 2016 the numbers were as follows: there were 409 detained foreign nationals in the Sofia Detention Centre, of whom 337 had applied for asylum,

and 222 in the Lyubimets Detention Centre, of whom 53 had applied for asylum.³⁷ In 2017, the Bulgarian Helsinki Committee identified 77 asylum seekers whose asylum procedures had been carried out and completed while they were being held in immigration detention.³⁸

“Short-term” detention

The statutory time limit for this preliminary “short-term” detention is 30 days. By law, “short-term” detention takes place in “special units” at the detention centres of the Migration Directorate. The order for “short-term” accommodation may be appealed. The Law on Foreign Nationals states that the appeal does not suspend the implementation of the order for “short-term accommodation” and that the court should decide the case “immediately”. However, in the only case of judicial review of such an order so far,³⁹ the first level court issued its judgment on the lawfulness of the short-term accommodation in question following the expiration of its period of 30 days.

The official statistics of the Ministry of the Interior show that “short-term” detention is being imposed on persons of various nationalities, but most commonly Syrians.

Nationality of persons in short-term detention:⁴⁰

Country	Lyubimets centre 01.01.2018 – 14.06.2018	Busmantsi centre 01.01.2018 – 14.06.2018	Busmantsi centre 2017
Algeria	2		
Afghanistan	17	2	3
Stateless		1	
Iraq	21	53	
Iran	5		
Congo	1		
Lebanon		1	
Pakistan	2	2	1
Syria	35	26	2
Turkey	2	2	1
TOTAL	85	87	7

The average length of the application of “short-term” detention so far is 19 days in the centre in Lyubimets and 15 days in the centre in Busmantsi.⁴¹ Official statistics also reveal that over 75% of the short-term detained third country nationals are asylum seekers (see table below). By law, the order for “short-term accommodation” should be issued “following an individual assessment on the principle of proportionality”. However, detaining *prima facie* refugees is a sign of mass detention, without an individual approach.

Asylum seekers in short term detention:⁴²

Short term detention centre	No. of detained persons	Asylum applicants amongst detained persons	% of asylum seekers detained
Lyubimets	85	65	76,5%
Busmantsi	94	73	77,7%

It is noteworthy that the introduction of “short-term” detention in law aimed to legalise the already-existing practice of *de facto* detention of persons who have crossed the border irregularly in the so-called “Distribution Centre” in Elhovo. For example, reports from 2015 show that the handing over of persons from the Border Police to the Distribution Centre in Elhovo took place without any detention orders: “All border applicants, except those who arrived openly at border crossing points, are being sent by the border police to Elhovo Allocation (triage) centre, which violates the present national legal arrangements. Additionally, the referral is conducted without detention orders, thus can be qualified as an illegal deprivation of liberty.”⁴³

B. GREECE

The research on Greece addressed the following forms of detention upon entry of asylum seekers:

- detention pending transfer to Reception and Identification Centres (RIC)
- detention in RIC, generally known as “hotspots”
- geographical restriction to the Greek islands
- detention of children under the pretext of “protective custody”
- detention in transit zones
- pilot project on detention upon arrival
- push-backs

Detention at the Greek-Turkish land border of Evros pending transfer to RIC

According to Article 14(1) of Law 4375/2016, newly arrived persons “shall be directly led, under the responsibility of the police or port authorities ... to a Reception and Identification Centre.” However as already noted in 2016,⁴⁴ due to an increase in the arrivals at the Greek-Turkish land border in Evros, delays occur in the transfer of newly-arrived persons to the RIC of Fylakio, ranging from a few days to periods exceeding one month, depending on the flows. During this waiting period, newly-arrived persons remain in a pre-removal detention centre under a decision issued by the police, despite the lack of legal basis for such detention. Their detention is imposed “up to the time that [the person] will be transferred to Evros (Fylakio) RIC in order to be subject to reception and identification procedures”, as stated in the relevant detention order.⁴⁵

In October 2017, following a number of cases of persons detained pending their transfer to the RIC of Fylakio, for a period varying between one and three months, which were referred by GCR, the Greek Ombudsman stated that, pursuant to the national legislation, detention measures can only be ordered after and not prior to the Reception and Identification Procedure, and requested that the competent authorities

clarify the legal basis on which they order detention before transfer to the RIC.⁴⁶ Following interventions by the GCR and the statements of the Greek Ombudsman, people remain in detention for just one week before they are transferred to the RIC of Fylakio.

Reception and Identification Centres – “hot spots”

Hotspots are defined as “a pilot model of a more permanent registration and identification mechanism at the points of arrival that selects between those seeking asylum and those to be returned”.⁴⁷

Newly arrived persons transferred to an RIC are subject to a three-day restriction of liberty within the premises of the RIC, which can be further extended by a maximum of 25 days if reception and identification procedures have not been completed.⁴⁸ This restriction of freedom entails “the prohibition to leave the Centre and the obligation to remain in it.”⁴⁹ Taking into consideration the fact that by law the persons should remain restricted within the premises of the RIC and are not allowed to leave, the measure provided by Article 14 L 4375/2016 is a *de facto* detention measure, even if it is not classified as such under Greek law. No legal remedy is provided in national law to challenge this “restriction of freedom” during the initial three-day period.⁵⁰ Furthermore, the initial measure is imposed automatically, as the law does not foresee an obligation to carry out an individual assessment.⁵¹ This measure is also applied to asylum seekers who may remain in the premises of an RIC for a total period of 25 days, even after lodging an application.⁵²

According to GCR, this form of detention has been used in order to detain individuals immediately upon arrival in Greece, before they have even completed their initial registration. Therefore, in practice, it amounts to a prejudiced treatment of asylum seekers on the basis of their nationality and/or gender, and on an unsubstantiated preconception of some as economic migrants.⁵³

In 2017, following criticism by national and international organisations and bodies, and as a consequence of the limited capacity to maintain and run closed facilities on the islands with high numbers of people,⁵⁴ the “restriction of freedom” within the RIC premises was not applied

- 55 AIDA Country Report on Greece (2017 update), p. 152.
- 56 AIDA Country Report on Greece (2017 update), p. 25.
- 57 A number of 12 609 newly arrived persons remain stranded on the Eastern Aegean Islands, as of 31 January 2018, where the nominal capacity of the reception facilities was of 7 876 places. The nominal capacity of the RIC facilities (hotspots) was of 6 246 while 9 902 were residing there, under a geographical restriction, see AIDA Country Report on Greece (2017 update). See also Greece: Council of State Annuls Geographical Restriction of Asylum Seekers on the Islands”, 17.4.2018, <http://www.asylumineurope.org/news/17-04-2018/greece-council-state-annuls-geographical-restriction-asylum-seekers-islands>.
- 58 Pursuant to Article 78 L 3386/2005.
- 59 AIDA Country Report on Greece (2017 update).
- 60 *Guzzardi v. Italy*, no. 7367/76, 6 November 1980.
- 61 *Ibid.*, para. 93.
- 62 *Ibid.*, para 92.
- 63 *Austin & Others v. the United Kingdom*, nos. 39692/09, 40713/09 and 41008/09, 15 March 2012, para. 59.
- 64 Majcher, I. (2018) *The EU Hotspot Approach: Blurred Lines between Restriction on and Deprivation of Liberty (PART II)*, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/04/eu-hotspot-0>.
- 65 <https://www.amnesty.gr/news/press/article/21262/dilos-gavril-sakellaridi-meta-tin-episkepsi-se-kataylismoys-sti-hio-kai>
- 66 <https://data2.unhcr.org/en/documents/download/67534>
- 67 Efsyn, “Πρωτοχρονιά πίσω από τα κάγκελα”, 30 December 2017, <http://bit.ly/2EQqM83>.
- 68 Greek law allows the detention of unaccompanied children in protective custody while awaiting transfer to a shelter for 25 days, and for up to 45 days under very limited circumstances.
- 69 AIDA Country Report on Greece (2017 update).

as a *de facto* detention measure in RIC facilities on the islands of Lesbos, Chios, Samos, Leros and Kos. There, newly arrived persons were allowed to exit the RIC facility. However, for those subjected to a “restriction of freedom” in the RIC of Fylakio near the Evros border, the measure was applied as *de facto* detention.⁵⁵

Geographical restrictions on the Greek islands

The above-mentioned practice of *de facto* detention in hotspot facilities was largely abandoned in 2017 on the islands and replaced by a practice of “systematic geographical restriction”, namely, “an obligation not to leave the island and to reside at the hotspot facility, which is imposed indiscriminately on every newly-arrived person”.⁵⁶ The practice of geographical restriction has led to significant overcrowding of the facilities on the islands, and thus to the deterioration of reception conditions.⁵⁷

In practice, those arriving on the Greek islands and falling under the EU-Turkey statement are subject to a “restriction of freedom of movement” decision issued by the Head of the RIC. The decision is revoked once the registration by the RIC is completed, usually within a couple of days. It is followed by a return decision “based on the readmission procedure” and a pre-removal detention order is issued by the competent Police Directorate. The return decision and detention order are respectively suspended by a “postponement of deportation” decision of the General Regional Police Director.⁵⁸ The latter decision imposes a geographical restriction, ordering the individual not to leave the island and to reside – in most cases – in the RIC or another accommodation facility on the island until the end of the asylum procedure.⁵⁹

It could be argued that despite being labelled as “restriction of freedom of movement” this geographical restriction can be interpreted as deprivation of liberty, as the situation of individuals subjected to the geographical restriction on Greek islands resembles that of the appellant in the *Guzzardi* case,⁶⁰ where the European Court of Human Rights found that the confinement of an applicant to a small island under permanent supervision for 16 months amounted to deprivation of liberty. The Court stressed that the difference between restrictions on freedom of movement and deprivation of liberty “is merely one of degree or

intensity, and not one of nature and substance”.⁶¹ In order to establish whether restriction on freedom of movement amounts to deprivation of liberty, the Court assesses the concrete situation of the case and takes into account “a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question”,⁶² as well as the context in which the measure is imposed.⁶³ Taken cumulatively, the prolonged obligation to remain on the Greek islands, with restrictions on freedom of movement on the islands themselves, in substandard material conditions and the uncertainty about one’s future prospects might well reach the threshold of deprivation of liberty.⁶⁴

Therefore, it needs to be emphasized that despite their formal non-detention on the islands, the vast majority of asylum seekers are still trapped under conditions highly similar to those of detention. It is no wonder, then, that the Greek “hotspot” islands have been characterised as “open prisons”.⁶⁵

“Protective custody” of children

Out of a total of 3 741 unaccompanied children estimated in Greece at the end of 2018, as many as 1 983 were out of long term or temporary accommodation. Of these, 86 were detained in police stations and pre-removal centers on the mainland (“protective custody”), while 701 were in reception and identification centres and 124 pending transfer to long term or temporary accommodation.⁶⁶

Due to the lack of accommodation facilities or transit facilities for children, the detention of unaccompanied minors is systematically imposed and may be prolonged for periods ranging from a few days to more than two months, pending their transfer to an accommodation facility.⁶⁷ Unaccompanied minors are detained in police stations and pre-removal facilities on the mainland (“protective custody”) or in RIC on the islands in unacceptable detention conditions. According to GCR findings, unaccompanied children may remain in the RIC of Fylakio for a period exceeding the maximum of 25 days⁶⁸ under the pretext of “protective custody”, while waiting for a place in a reception facility to be made available. In 2017, this period reached six months in a number of children’s cases, as no maximum time limit applied to their detention.⁶⁹

Human Rights Watch has pointed to the illegality of this practice and found that unaccompanied children face routine, arbitrary detention, even though “under international law, binding European directives, and national law, the detention of unaccompanied children can be used only as a measure of last resort, in exceptional circumstances, and for the shortest appropriate period.”⁷⁰

The routine detention of unaccompanied children has been the object of criticism by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which, in preliminary observations made at the end of its *ad hoc* visit to Greece from 10 to 19 April 2018, recalled the Committee’s position that unaccompanied children should not, in principle, be deprived of their liberty and called on the Greek authorities to increase efforts to end their detention in police establishments.⁷¹

70 Human Rights Watch, “Why Are You Keeping Me Here?” Unaccompanied Children Detained in Greece, 8 September 2016, <http://www.refworld.org/docid/57d2b04b4.html>, p. 1.

71 CPT visit to Greece from 10 to 19 April 2018, 1 June 2018, CPT/Inf (2018) 20, <http://www.refworld.org/docid/5b1900aa4.html>.

72 AIDA Country Report on Greece (2017 update), p. 153.

73 CPT, Report to the Greek Government on the visits to Greece carried out by CPT, CPT/Inf (2017) 25, 26 September 2017, <http://bit.ly/2Fktu5U>, para 59.

74 Article 60(2) L 4375/2016.

75 Article 60(1) L 4375/2016.

76 Athens Airport Police Directorate, Doc. No 4888/3/581/350, 20 March 2017.

77 That was, for instance, the case for a single-parent family with two young children aged eight and eleven, who were denied entry upon arrival at the Athens International Airport. The family was detained, without any detention order, in the Police Directorate of the Athens Airport for a total period of 31 days, 28 of which were subsequent to the full registration of the asylum application (GCR, Document No 177/2017).

78 GCR, Reports of systematic pushbacks in the Evros region, February 2018, <https://www.gcr.gr/media/k2/attachments/ReportZ08032018.pdf>; The new normality: Continuous push-backs of third country nationals on the Evros river, 10 December 2018, <https://www.gcr.gr/en/news/press-releases-announcements/item/1028-the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river>.

79 <http://www.ekathimerini.com/236443/article/ekathimerini/news/migrant-influx-through-evros-tripled-last-year-minister-says>.

80 InfoMigrants, Greek authorities accused of illegal pushbacks and violence against migrants, 2018, <http://www.infomigrants.net/en/post/11579/greek-authorities-accused-of-illegal-pushbacks-and-violence-against-migrants>.

81 ECRE, Push backs and human rights violations at Bulgarian and Greek borders with Turkey, 2018, <https://www.ecre.org/push-backs-and-human-rights-violations-at-bulgarian-and-greek-borders-with-turkey/>.

Transit zones detention

A regime of *de facto* detention also applies in the case of persons entering the Greek territory from the Athens International Airport (Eleftherios Venizelos) – usually through a transit flight – without a valid entry authorization.⁷² These persons are banned from entering Greek territory before being arrested and held in order to be returned on the next available flight. Persons temporarily held while awaiting their departure are not systematically recorded in a register. If the person expresses the intention to apply for asylum, he or she is detained at the holding facility of the Police Directorate of the Athens Airport, next to the airport building. After full registration, the application is examined under the border procedure. As provided by the law, if no decision is reached within 28 days then the person is allowed to enter Greek territory for the application to be examined according to the regular procedure.⁷⁴ However, despite national legislation providing that rights and guarantees on the detention of asylum seekers should also be enjoyed by applicants who submit an application in a transit zone or at an airport,⁷⁵ no detention order is issued for those who submit an application after entering the country from Athens International Airport without a valid entry authorization. These persons remain *de facto* detained at the Athens Airport Police Directorate for a period up to 28 days from the full registration of the application. According to the police authorities, the persons held there are considered under “supervision” and not detention.⁷⁶ To GCR’s knowledge, this practice is applied indiscriminately to any person under these circumstances, including vulnerable groups.⁷⁷

Push-backs

According to testimonies collected by the GCR, cases of systematic pushbacks have been reported at the Greek-Turkish border of Evros.⁷⁸ As arrivals through Evros increased enormously in 2018,⁷⁹ the practice of stopping refugees and migrants at the borders and forcibly expelling them to the country they have come from,⁸⁰ seems to have increased as well.⁸¹ As stated by the GCR in its report, the Greek authorities follow a standard pattern in conducting these operations, which entails the arbitrary arrest of persons entering the country through the Turkish border and their transportation to places of detention for a period ranging from a

couple of hours to one day. Sometimes, though rarely, people have remained in custody for several days. After such a period of *de facto* detention, in which the detainees are guarded by officials dressed in police/military uniforms and sometimes with facemasks, they are transported to the Evros River and handed over to armed officials who send them back to Turkey.⁸² A large majority of them were nationals of so called “top refugee-producing countries” (Syria and Afghanistan) or of countries where forced displacement is an increasingly worrisome reality (i.e. Yemen).

Human Rights Watch interviewed people who had been pushed back, and thirteen reported that they had been detained in formal and informal locations close to the border, for periods ranging from a few hours to five days. Five said they were taken to a police station, while eight described buildings on the outskirts of nearby villages and towns, or on farmland which they said was used as drop-off points for detained migrants. None of the interviewees, even those held at police stations, had been identified and registered, and their detention appears to have been arbitrary and incommunicado. A few dozen to one hundred people were detained at a time, without food, water or sanitation, and then taken to the Evros River and returned to Turkey. Interviewees described the rooms in the unidentified buildings as “prison-like” and “like a storage room,” with a few mattresses and a single, filthy toilet. They said women and families with children were either held together with unrelated men⁸³ or sometimes in adjacent rooms.⁸⁴

“

They caught us and they put us in a military camp. They took my smartphone and my bag with all my clothes. I said that I was from Syria so that I won't be sent back. However, they gathered us, they put us in a small boat and they sent us back to Turkey.”

Turkish adult, 30 years old

The GCR documented that victims are families, pregnant women and also minors, who all reported their arbitrary detention under extremely poor hygienic conditions, with the removal of all their personal belongings and the use of violence throughout the entire process of detention.⁸⁵

“

The prison was 2x4 meters in the middle of nowhere. People were urinating, defecating, sleeping and resting all in one room. They took the women and the children out of the room. Soon afterwards, they brought 50 more people inside. The oxygen was almost finished in the room. We tried to break the door and this is when they came in and hit us. In the afternoon, they sent us back to the Turkish border in an illegal boat after taking all food, water, bags, belts and shoes from us.”⁸⁶

Hiwa Dartas, Kurdish journalist

Despite these pushbacks being reported and raised with the competent authorities by several organizations such as the GCR,⁸⁷ Amnesty International⁸⁸ and the Hellenic League for Human Rights,⁸⁹ Greek authorities do not acknowledge that systematic push-backs are happening and have repeatedly denied engaging in such practices.⁹⁰

The Council of Europe Commissioner for Human Rights has also expressed deep concerns about reported collective expulsions from Greece and has “urge(d) the Greek Authorities to cease immediately the (alleged) push-back operations and to uphold their human rights obligation to ensure that all people reaching Greece can effectively seek and enjoy asylum”.⁹¹

Pilot project on detention upon arrival

A “pilot project” was implemented on Lesbos, under which newly arrived persons belonging to particular nationalities with low recognition rates for international protection were immediately placed in detention upon arrival and remained there for the entire asylum procedure.⁹² This pilot project reflected a Greek local police circular from June 2016 in which the Ministry of the Interior described migrants from Algeria, Tunisia, Morocco, Pakistan and Sri Lanka as “undesirable aliens” with an “economic profile”. The pilot project was extended to target all individuals whose acceptance rate for asylum is statistically less than 25% and was formerly used also for Syrians.⁹³ Due to the EU-Turkey statement, border procedures on the islands usually find non-vulnerable Syrians inadmissible. This was used to characterise Syrian applicants as a low-profile group and justify blanket detention for them too. After local actors brought targeted challenges against the detention of Syrian applicants on vulnerability grounds, the practice stopped for this nationality.

Although in January 2018 this pilot detention project officially ended, other low-profile nationalities still face detention.⁹⁴ According to the police authorities in Lesbos, the decision on which nationalities “qualify” for detention on the basis of low recognition (below 25%) is revised every four months and the practice changes each time, to reflect the latest statistics of the Lesbos Regional Asylum Office. In December 2018 there were about 50 detainees from Central and North Africa, Bangladesh and Pakistan. The police enforcing the detention justify such action based on the individual’s responses during their initial registration, claiming that these individuals have applied for international protection “in order to delay or frustrate the enforcement of a return decision”. While this is one of the legal grounds for detention under Greek Law, this reasoning is being used to detain individuals immediately upon arrival in Greece, before they have even completed their initial registration. While the stated reason for detention has changed, it seems that detention is still largely based on nationality, given that most of those detained upon arrival are from countries where the majority of citizens are denied international protection.

Further frustrating judicial review of these decisions, individuals are often detained without a written comprehensive order from the Police Director, stating “complete and comprehensive reasoning” for the detention, as required by Greek Law 4375, Article 46(3). The lack of such an order makes it difficult for individuals and lawyers alike to legally challenge the decision in court.

It must be stressed that this highly arbitrary and discriminatory treatment, which *inter alia* contravenes the very foundations of the Geneva Convention, amounts to a highly degrading and humiliating treatment enacted against applicants for international protection.⁹⁵

- 91 Council of Europe Commissioner for Human Rights, 7 June 2017, <http://bit.ly/2EqsjC>.
- 92 AIDA Country Report on Greece (2017 update), p. 146.
- 93 Deportation Monitoring Aegean, The prison within the prison within the prison: The detention complex of Moria Camp, 2018, <http://dm-aegean.bordermonitoring.eu/2018/09/23/the-prison-within-the-prison-within-the-prison-the-detention-complex-of-moria-camp/>.
- 94 Legal Centre Lesbos, January 2018 Report on Rights Violations and Resistance in Lesbos, <http://legalcentreslesvos.org/2018/02/10/january-2018-report-on-rights-violations-and-resistance-in-lesvos/>.
- 95 <https://www.gcr.gr/media/k2/attachments/SCIZReportZfinalZPDF.pdf?fbclid=IwAR2GqAZPUdv2UIOb1iGW0vmc9lGHkh4uKNsBfyFVbR0XDCZ5Xcf1KeO-Fc>.

C. HUNGARY

The transit zones at the Serbian-Hungarian border at Röszke and Tompa began operation on 15 September 2015, once the construction of the border fence was completed. Two additional transit zones were constructed near the Croatian-Hungarian border (at Beremend and Letenye) a month later, but were never used.

At the same time, the “state of emergency due to mass migration” regime was introduced and is still in force.⁹⁶ During this state of emergency special rules apply to third-country nationals irregularly entering and/or staying in Hungary and to those seeking asylum, and certain provisions of the Asylum Act are suspended. This state of emergency authorises the police to push irregular migrants, including those who wish to seek asylum in Hungary back across the border, from any part of the country. There are no legal procedure or opportunities to challenge this measure, and asylum applications can only be submitted in the transit zones at the border unless the applicant is already residing lawfully within the territory of Hungary. The state of emergency remains in force despite a very small number of asylum seekers entering Hungary (671 in 2018). Such a low number of asylum seekers makes the justification for the state of emergency questionable.

- 96 The “state of emergency” was introduced and then subsequently prolonged every 6 months by the Hungarian Government. By virtue of Section 5 (2) of Governmental Decree 41/2016 (III.9.), the state of emergency regime shall be in effect until 9 March 2019.
- 97 Section 15 of Act CXL, introducing the new title of Border Procedure to the Asylum Act.
- 98 Article 24 of Procedures Directive.
- 99 Section 80/J (5) and Section 5 (2) c) of Act LXXX of the Asylum Act.

Transit zones detention

According to the amendments which entered into force on 15 September 2015, the asylum office were to conduct a border procedure in the case of applicants who lodged their asylum application in the transit zones. This procedure was not applicable to applicants belonging to vulnerable groups.⁹⁷ This meant that those belonging to vulnerable groups, especially unaccompanied children, families with a minor child, single women, the elderly, the disabled, and those with serious illness, were transferred from the transit zone to an open reception facility on the day they lodged their asylum application, in line with the provisions of the recast Procedures Directive.⁹⁸ All those who were not assessed as vulnerable applicants were kept in the otherwise closed container camps for a maximum of 28 days. From 15 September 2015 until 28 March 2017, these provisions were in place in the transit zones.

On 28 March 2017 a set of amendments came into force which, among other things, prescribed the automatic *de facto* detention of all asylum seekers in the transit zone, with the sole exception of unaccompanied children under 14, for the entire duration of the asylum procedure, with the only way to leave the transit zone being in the direction of Serbia.⁹⁹

Tompa transit zone. Photo taken on 6 April 2017. Credits: Attila Póth



Inside Tompa transit zone. Photo taken on 6 April 2017. Credits: Attila Póth



Despite the existence of legal safeguards for asylum seekers ensuring the lawfulness of detention, the maximum duration of stay, and an automatic judicial review of the decision to extend the period of detention,¹⁰⁰ as the government does not consider the transit zones to be detention, and therefore a ruling (“végzés”) by the IAO ordering the applicant’s place of residence in the transit zone is not considered to constitute a detention order, these safeguards do not apply. Not only is there no need to justify the legal basis for placing asylum seekers in the transit zones, but there is also no possibility to seek judicial remedy against this ruling as, according to the law, the ruling may only be challenged within the potential judicial review request against the future decision on the merits of their asylum claim delivered in the asylum procedure.¹⁰¹ Furthermore, in contrast to a recognised detention centre, which has a mandated maximum stay of six months, *de facto* detention in the transit zone has no maximum time limit, and asylum seekers must remain there until their asylum procedure is concluded.

As a consequence, officially-recognized asylum detention procedures – along with alternatives to detention – are now hardly ever used.¹⁰² Instead, the great majority of asylum seekers are held in arbitrary *de facto* detention for the duration of their asylum procedures, which in certain cases lasts as much as a year or more.

100 Section 32/A(1) of the 2007 Hungarian Asylum Act foresees a number of lawful grounds for the detention of asylum seekers. At the same time, Hungarian legislation dictates that the detention of asylum seekers may only be ordered on the basis of an individualised assessment of the personal circumstances of the individual in question, and then only if the purpose of detention cannot be achieved through the use of less coercive measures.

101 Section 32/Q (6) and Section 32/R (6) of the 2007 Asylum Act and Section 4 (4) b) of Act I of 2017 on the Code of Administrative Litigation.

102 AIDA Country report Hungary, p. 79. At the time of the report (April 2018), only five asylum seekers nationwide were officially held in asylum detention facilities.

D. ITALY

Until 5 October 2018, detention upon arrival occurred in three ways in Italy: *de facto* detention in hotspots, *de facto* detention on boats and the other was the only form of deprivation of liberty regulated by law for irregular migrants, thus, the administrative detention in pre-removal centres (CPRs). CPRs host foreigners subject to repatriation pursuant to Articles 13-14 of the Consolidated Immigration Act and, in special areas, international protection applicants who are in situations described in Article 6 of the Reception Decree (n. 142 /2015).

During the drafting of this research, an important reform of the national immigration system took place. Law Decree 113/18 approved by Law 132/2018, which entered into force in December 2018,¹⁰³ had an impact on detention and partially regulated *de facto* detention in the hotspots for asylum seekers.

Hotspots as de facto detention

In 2015, in order to manage the so-called “refugee crisis”, the European Agenda on Migration introduced the “hotspot approach” as a model of operational support for frontline Member States facing migratory pressure (Italy and Greece). This model is implemented in areas close to the point of arrival by sea and within facilities that provide initial reception assistance and aim at swiftly identifying, informing, registering and fingerprinting incoming migrants at any point of arrival and avoiding irregular movements.

As envisaged by the European Agenda on Migration in 2015 and the Italian political and non-binding documents – the Italian Roadmap and the Standard Operating Procedures (SOPs) – the hotspots were not conceived as places of deprivation of liberty, but as designated areas where migrants “are subjected to medical screenings, (...) document checks, pre-identified, and, after having being informed about their current condition as irregular immigrants and the possibility of applying for international protection, they are fingerprinted”. In fact, the hotspots have been envisaged as places where it would be possible to sort

people according to: who intends to seek asylum, who is eligible for the Relocation Programme and who does not express the will to seek international protection or does not intend to do it. Once identified, persons should be channelled respectively to proper reception centres (more frequently CAS and CARA) or Pre-Removal centres (CPRs).¹⁰⁴ Hotspots can now also be used to identify and register every irregular migrant detected on the Italian territory, thus not only those arriving by sea.¹⁰⁵

However, as reported by several NGOs,¹⁰⁶ in some situations the hotspot premises had become places where *de facto* detention was observed. In instances where there was a large increase in migrant arrivals at the hotspot, the following was observed:

- the identification of asylum seekers extended beyond the 48 hour window, and until asylum seekers’ claims were officially registered, they were not allowed to leave the hotspot (after 48 hours a formal judicial order for deprivation of liberty would be required);
- management bodies and the Prefecture took time to properly transfer identified asylum seekers to reception centres, and in certain areas people could not leave the hotspot (Lampedusa, Messina and Taranto for UAMs).¹⁰⁷



The implementation of the hotspot approach has always been characterised by the diversity of regimes from one hotspot to another, and the unpredictability of regimes within the same facility:

- Pozzallo and Taranto have been working as open centres, however in Taranto such provision only applied to adults: minors were not allowed to leave the tent complex
- In Lampedusa, formally considered a closed centre since the very beginning, persons usually exited during the day through a hole in the fence, with the tacit consent of the community and the mayor
- Trapani started to work as open centre only in September 2017
- Messina is considered an open centre, although people interviewed by UNHCR and CIR denied this statement

Although Law n. 46/17 introduced a new article 10-ter in the Consolidated Immigration Act (Lgs. D n. 286/98), referring to the hotspots as “points of crisis”, it did not place the regulation of their functioning on legislative footing. This meant that it did not provide any clarification on whether the hotspots should operate under a closed or open-door policy. In this respect, it is worth bearing in mind that, as per Article 13 of the Italian Constitution, any form of limitation of liberty cannot be carried out without a formal judicial order and cannot exceed 48 hours (even in this last case, it would need a judicial validation). The legal conditions for detaining migrants within the hotspot facilities are not currently subject to the validation of the judicial authorities. Besides, access to a remedy against these restrictions on personal freedom (beyond 48 hours) or inappropriate living conditions could be difficult to obtain, since no lawyer can access the hotspot, only legal operators belonging to international organisations, NGOs and management bodies. Thus, for long time there was no legal basis governing the deprivation of liberty within hotspots in cases where detention may be prolonged for a timeframe that exceeds custody or first assistance, as stated in the ECtHR judgment in *Khlaifia and others v. Italy*.¹⁰⁸

However, with the entry into force of Law n. 132/18, new-coming applicants can be detained for up to 30 days within the hotspot facilities until the determination of their nationality/identity has been completed. If the nationality/identity is still uncertain, persons can be transferred to a CPR for up to six months. 210 days of detention is extremely

long, especially considering that detained asylum seekers have not committed any crime.¹⁰⁹ The grey area involving hotspots that were becoming open or closed structures according to the requirements of the public safety authority and the procedures carried out in those circumstances¹¹⁰ seems to have been remedied by the new law. However, the law has been criticized for its broad scope, giving the authorities wide-ranging discretion over who to detain. By simply providing for the possibility of detention “for the determination or verification of identity or citizenship” the law does not strictly regulate the conditions in which such a measure can be applied, and therefore ends up sanctioning the deprivation of liberty of all applicants over whom the public security authority decides to exercise its broad powers of discretion.¹¹¹ Whether this formal detention will comply with the necessary procedural safeguards, and will not be applied automatically, is yet to be seen.

Up to December 2018, the operating hotspots in Italy have been Lampedusa, Pozzallo, Taranto and Messina. Italy is currently experiencing a significant decrease in the number of migrant arrivals by sea compared to the same period in 2016 and 2017¹¹² and identification procedures are carried out without difficulties within 48 hours. The *de facto* detention of asylum seekers in hotspots therefore currently does not occur for reason related to identification procedures.

De facto detention on boats

In 2011, the Centre for Aid and First Reception (CPSA) in Lampedusa was seriously damaged and the Italian authorities were forced to find a different location for more than a thousand migrants present on the island. They were taken to Palermo and embarked on three ships which had been docked for several days at the port of Palermo. Migrants were restrained on these boats without any detention order. The ECtHR found that this situation amounted to arbitrary deprivation of liberty in violation of Article 5 of the Convention in the *Khlaifia* case.¹¹³

108 *Khlaifia and Others v. Italy*, Application no. 16483/12, 15 December 2016. See also Global Detention Project, Italy Immigration Detention Profile, January 2018, <https://www.globaldetentionproject.org/countries/europe/italy>. At the time, the centre was designated as “first aid and reception centre” (CPSA).

109 <http://www.cir-onlus.org/wp-content/uploads/2018/11/Scheda-Salvini-Trattenimento-1-1.pdf>.

110 National Guarantor for the Rights of persons detained or deprived of their Liberty, Report to the Parliament, June 2018, p. 231.

111 http://www.cir-onlus.org/wp-content/uploads/2018/11/Trattenimento_edited.jpg.

112 Migrants arrived by sea from January to September in 2016: 130 567; in 2017: 103 064; in 2018: 20 926. See http://www.interno.gov.it/sites/default/files/cruscotto_statistico_giornaliero_21-09-2018.pdf.

113 *Khlaifia and Others v. Italy*, appl. no. 16483/12, 15 December 2016.



No one lands in Italy without my permission.”

Minister of the Interior Matteo Salvini
on his Facebook page
24 August 2018

In August 2018, 177 people – including unaccompanied minors – were denied permission to disembark by the Minister of the Interior, Matteo Salvini. They were docked at the port of Catania, and were allowed to disembark only after five days (Diciotti case).

The refusal of the Minister of Interior to give the authorisation to disembark, apart from raising questions about Italy’s compliance with national and international laws, and having been criticised as a way of controlling migration through *de facto* detention¹¹⁴ without any formal decision of port closure,¹¹⁵ led to an investigation by the Italian prosecutors, who initially investigated the Minister of the Interior for the abuse of office, kidnapping and the illegal arrest of migrants,¹¹⁶ but in the end charged him only with aggravated kidnapping.¹¹⁷

The political response to migration by blocking the vessels in the Mediterranean Sea, forbidding docking, and leaving people on boats for days is continuing. Recently, migrants aboard Sea Watch and Sea Eye vessels were stranded on their boats for eighteen days, before they were finally permitted to disembark in Malta.¹¹⁸

- 114 Francesca Cancellaro and Stefano Zirulia, Controlling Migration through *De Facto* Detention: The Case of the 'Diciotti' Italian Ship, 2018, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/10/controlling>.
- 115 <https://www.asgi.it/media/comunicati-stampa/chiusura-porti-accesso-civico/>.
- 116 Reuters, <https://www.reuters.com/article/us-europe-migrants-italy/sick-migrants-disembark-stranded-italian-boat-as-salvini-defies-u-n-idUSKCN1LA0IF>.
- 117 https://www.agi.it/cronaca/diciotti_salvini_indagato_cosa_rischia_palermo-4355523/news/2018-09-08/.
- 118 <https://www.unhcr.org/mt/4100-unhcr-welcomes-malta-disembarkation-of-sea-watch-and-sea-eye-passengers-calls-for-better-predictable-approach.html>.

IV. RATIONALE BEHIND THE INCREASED USE OF DETENTION UPON ARRIVAL

The research shows that factors contributing to the increased use of detention were the following:

- increase and continued “perceived” increase in arrivals (all researched Member States)
- EU policy and legislation (Bulgaria, Greece, Italy)
- lack of accommodation (Bulgaria, Greece)
- security concerns, protection of external borders (Bulgaria, Hungary, Italy)
- to prevent onward movement and abuse of asylum (Greece, Hungary)

The detailed situation in each researched country will be described below.

A. BULGARIA

When the “Distribution Centre” in Elhovo, a former school campus, was opened in 2013, it was given as an example of one of the “urgent measures” of a temporary nature to tackle the “refugee wave” facing Bulgaria. The then Minister of the Interior, Tsvetelin Yovchev, presented it as addressing “the problem of finding places for asylum seekers”,¹¹⁹ although in practice it constituted a place for deprivation of liberty outside the law. According to a press release of the Ministry of the Interior, entitled “A Distribution Centre is established in Elhovo, which will assist the initial processing of the refugees stopped at the Bulgarian – Turkish border”, the Prosecutor General stated that “the creation of the distribution centre will have two main objectives: humanitarian and solving administrative and criminal law problems”.¹²⁰

Although the number of asylum seekers in Bulgaria dropped from 20 391 in 2015 to 3 700 in 2017,¹²¹ the above line of rhetoric has continued. “Exceptional measures of a temporary character” like mass detention are “normalized” in public discourse through two lines of argument: on the one side, they are presented as a “humanitarian” response (detention under all three legal regimes in Bulgaria is called “accommodation” in law), while on the other, they are cited as actions taken to solve public order and national security threats. In fact, the reduced number of entries by asylum seekers in Bulgaria is presented as a result of the policy of “protecting the external borders of the European Union”, proclaimed as one of Bulgaria’s achievements. The European Commission also decided to respond to requests for emergency funding received from the Bulgarian authorities and made available up to €108 million in emergency funding to support border and migration management.¹²² On the other hand, it is worth noting that on 8 November 2018, the European Commission sent a letter of formal notice to Bulgaria concerning the incorrect implementation of EU asylum legislation, related *inter alia* to the detention of asylum seekers and safeguards within the detention procedure.¹²³

“

The priorities of the party are non-admission of migrants and refugees on the territory of the country and immediate deportation of those who have come illegally in the country.”¹²⁴

Valery Simeonov
co-chair of “United Patriots” coalition party

- 119 Bulgarian National Radio, До две седмици започва да действа временният разпределителен център в Елхово, 17.9.2013, <http://bnr.bg/post/100072629/do-dve-sedmici-zapochva-da-deistva-vremenniyat-razpredeliten-centyr-v-elhovo>.
- 120 Ministry of the Interior, В Елхово се създава разпределителен център, който ще подпомага първоначалното обработване на спрениите на българо – турската граница бежанци, 17.9.2013, https://www.mvr.bg/press/nachalo/pregled/novini/news130917_07.
- 121 State Agency for Refugees, <https://www.aref.government.bg/index.php/bg/aktualna-informacia-i-spravki>.
- 122 http://europa.eu/rapid/press-release_IP-16-3088_en.htm.
- 123 http://europa.eu/rapid/press-release_MEMO-18-6247_en.htm.
- 124 Clubz.bg, Valery Simeonov: Валери Симеонов, „Да не допускаме бежанци и имигранти в страната“, 19.4.2017, <https://clubz.bg/52978-valeri-simeonov-da-ne-dopuskame-bejanci-i-migranti-v-stranata>.

B. GREECE

The “hotspots approach”, initially introduced in 2015 as a response by the European Commission to the migration flows coming into Greece,¹²⁵ turned hotspots into closed detention centres a year later¹²⁶ and then further on “transformed [them] into a type of hybrid, open-for-some, closed-for-others, facilities, charged simultaneously with the reception, accommodation, and detention of inbound refugees and asylum seekers”.¹²⁷

The “turnover” of hotspots into *de facto* detention centres coincided with the adoption of the EU-Turkey statement in 2016. The key aim of the EU-Turkey statement is to declare inadmissible almost all asylum applications, on the grounds that Turkey is a safe country for refugees and asylum seekers, and to enable swift deportations back there.¹²⁸ Since July 2016, the fast-track border procedure has also taken different forms depending on the nationality of the applicant, given that only Syrian nationals’ applications are deemed inadmissible, while asylum seekers coming from countries subject to low recognition rates face rejection of their claims on the merits.

As for the justification, allegedly this discriminatory type of detention has been enforced on the basis that some people merely apply for asylum in order to “delay or frustrate the enforcement of a return decision”, and thus fall within the scope of the law. EU pressure is likely to have had a direct impact on this policy, since a 2016 Joint Action Plan on the implementation of the EU-Turkey statement urged the Greek authorities to “introduce segmentation by case categories to increase speed and quality (e.g. [...] nationality clusters according to admissibility, low and high recognition eligibility).”¹²⁹

There are severe shortcomings in the implementation of the agreement between Turkey and the EU on the return of migrants who arrive in Greece illegally. For example, whereas 50 000 migrants have landed in Chios since the signature of the statement in March 2016, only 1 500 have been returned to Turkey.¹³⁰ In total, 1 755 people have been returned from Greece to Turkey in the framework of the EU-Turkey statement since 20 March 2016.¹³¹ The consequence has been

an increased use of detention.¹³² Human Rights Watch describes the conversion of hotspots into “prison-like camps” that took place in Chios and Lesbos very soon after the deal came into effect.¹³³

A number of pilot projects on detention have been initiated following the implementation of the EU-Turkey statement. For example: “In line with the Joint Action Plan on the implementation of the EU-Turkey statement, which recommended an increase in detention capacity on the islands, the pre-removal detention centre of Moria in Lesbos, initially established in 2015, was reopened in mid-2017.”¹³⁴

Lesvos island, outside the camp of Moria. Credits: Dimitris Michalakis/GCR



Chios island, in the Reception and Identification Centre. Credits: GCR



However, the policy of *de facto* detention pursued by the Greek authorities in Evros, and specifically in the Fylakio centre, dates back to the passing of Law 3907/2011, which is to say long before the entry into force of the EU-Turkey deal. The RIC of Fylakio (which, until 2016, went by the name of First Reception Centre) has been operational since March 2013. Indeed, First Reception Centres (FRCs), including the one in Fylakio, had the purpose of facing the migratory pressures on the Greek-Turkish border, which increased significantly from 2008, when Italy and Spain began effectively blocking routes into their countries.¹³⁵

The key role of FRCs was to ensure access to international protection and to guarantee the swift identification of asylum seekers in adequate reception conditions, taking into account their specific vulnerability.¹³⁶ In other words, they were expected to “replace the systematic use of detention as the default response when third country nationals arrive in an irregular manner in Greece.”¹³⁷ In practice, however, due to insufficient resources and limited capacity to receive new arrivals, individuals did not benefit from reception services as foreseen in the legislation. Instead, asylum seekers were detained in identification

centres or police stations, in premises which were regularly overcrowded and which did not meet the required standards.¹³⁸ In fact, according to ECRE, and despite its name, the regime at the FRC of Fylakio was clearly one of detention, because the individuals accommodated there were, without exception, deprived of their liberty during their stay in the centre.¹³⁹

As stated by the Council of Europe’s Parliamentary Assembly report, according to the Greek Government’s policies, “all migrants who are detected when irregularly entering Greece are systematically detained for the sole purpose of their irregular migration. By criminalizing the irregular status of migrants the Greek authorities accept detention as the necessary consequence.”¹⁴⁰ The Parliamentary Assembly denounced this systematic detention of irregular migrants and asylum seekers, carried out without an individual assessment in each case, which “would appear to be a political measure aimed at deterring potential migrants from entering Greece.”¹⁴¹ “While these policies have helped reduce considerably the flow of arrivals across the Evros border with Turkey, they have transferred the problem to the Greek islands and have not helped significantly in dealing with the situation of irregular migrants, asylum seekers and refugees already in Greece.”¹⁴²

Regarding the *de facto* detention of children in “protective custody”, the reasons underlying it are the chronic reception shortage and, crucially, the reduction in the number of places in the reception network (EKKA) in 2017, together with the increase in incoming migration flows.



1,100 unaccompanied minors entered the country from the 1st of August until the 30th of November 2017, entries that pressured the already insufficient infrastructure protection system.¹⁴³

Minister for Migration’s general secretary
Miltiades Klapas

As Human Rights Watch points out, “the Greek government justifies the detention of unaccompanied children as a temporary protection measure in the child’s best interest. In practice it is anything but.”¹⁴⁴

C. HUNGARY

During the debate in Parliament on the transit zones, both government representatives and members of parliament of the governing coalition claimed that a) such measures are in line with relevant EU regulations, and b) the establishment of transit zones can halt the mass influx of third-country nationals.¹⁴⁵ The fact that transit zones would constitute deprivation of liberty was vehemently denied by the government.

During the debate in Parliament on the amendments on making the stay in the transit zones compulsory for all asylum seekers except unaccompanied minors under fourteen years of age, the Secretary of State of the Ministry of Interior stated that “it is the interest of Hungary that those illegal immigrants whose asylum procedures are still pending cannot move freely around within the country.”¹⁴⁷ The general reasoning of the adopted bill begins with the following statement: “based on recent experiences, many illegal immigrants abuse EU regulations. They lodge an asylum application, but before a decision is made, they move freely around within the European Union. This poses a serious security risk: many of the perpetrators of recent terrorist attacks disguised themselves as asylum seekers [...] even in Hungary a lot of abuses took place: illegal immigrants claimed to belong to vulnerable groups, thus excluding themselves from the border procedures.”¹⁴⁸

The government and state officials continue to refuse to acknowledge that placement in the transit zones is *de facto* detention.

- 145 <http://www.parlament.hu/orszaggyulesi-naplo-elozo-ciklusbeli-adatai>.
- 146 www.parlament.hu/orszaggyulesi-naplo-elozo-ciklusbeli-adatai.
- 147 <http://www.parlament.hu/iroman-yok-egyszerusített-lekerdezese>.
- 148 <http://www.parlament.hu/irom40/13976/13976.pdf>.
- 149 <http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/zsarumagazin/ellenorzes-nelkul-senki-nem-lephet-be>.
- 150 <http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/zsarumagazin/ellenorzes-nelkul-senki-nem-lephet-be>.
- 151 <http://www.origo.hu/itthon/20170530-tuzson-bence-a-kormany-nem-valtoztat-bevandorlaspolitikajan.html>.

“

Concerning the closed system, that is, the detention, the transit zone, one must add, is of course guarded from one side, as it is on Hungarian soil. On the Hungarian soil, there is naturally a guarding, there will be guarding, as there must be some form of defence in order to avoid riots. So this is of course something that must be dealt with.”¹⁴⁶

Minister of Justice Trócsányi
during the debate on the amendments
that established the transit zones
4 September 2015

“

We are detaining no one, those placed here are free, they can go to a non-EU country whenever they want to.”¹⁴⁹

Minister of the Interior Sándor Pintér
upon visiting the extended transit zone at Tompa
12 April 2017

“

The person who ended up in the transit zone is not in detention, but just as we oversee the border, we oversee the transit zone. 75 policemen, 30 public servants employed by the police, and almost 300 armed guards ensure order, that the zone is closed – in order to impede uncontrolled entry to the zone – and personal safety of the inhabitants. This is a closed system, those staying here must accept that.”¹⁵⁰

Brigadier General Károly Dávid, head of the Bács-Kiskun County Police
(where the Tompa transit zone is located)

“

Contrary to the statements of the Commission, the transit zones are not places of detention: people enter them voluntarily and can leave any time. Besides this, it is not a guarded area.”¹⁵¹

Bence Tuzson, secretary of state for communication
in response to the Commission’s announcement on infringement
proceedings moving forward
30 May 2017

D. ITALY

Since the first months of the hotspot approach, the practices introduced have led to situations of *de facto* detention with regard to asylum seekers and migrants in order to facilitate identification and fingerprinting procedures.¹⁵² This *de facto* detention within the hotspot facilities may be considered a consequence of the EU policy which, through its focus on guaranteeing the full respect of the Dublin system, has put pressure on Italy and Greece (criticized for the low rate of migrant registrations in the last two years) to adopt measures, including coercion, to compel migrants to give their fingerprints.

Moreover, in 2017, the European Commission prompted Member States along the EU's external border to consider the refusal to give fingerprints as a formal "risk of absconding", thus adding a new criterion for administrative detention. Such a recommendation has been adopted in the new Italian Law n.46/17.¹⁵³ This law aims to increase also the number of CPRs across Italy (one per region). Accordingly, the overall capacity of the detention system in Italy would reach 1600 places, compared to the 538 available at present.

The combination of the hotspot approach and the changes in the legislative framework for administrative detention might be considered a response to European political pressure, and to the need for border controls raised by the Italian society/electorate. This pressure resulted in an agreement reached in 2017 by the Italian Government with the Government of Libyan National Reconciliation, whose primary objective is the containment of irregular migration flows across the Mediterranean and the prompt repatriation of irregular foreign nationals, and which resulted in a downward trend of arrival registered in the second half of 2017 and at the beginning of 2018.¹⁵⁴

Furthermore, as per the European Commission's plan,¹⁵⁵ the Italian Government adopted the so-called *Code of Conduct for NGOs* for "Search and Rescue" activities in the Central Mediterranean Sea at the end of July 2017.¹⁵⁶ Although it was not mandatory, at least for non-signatory NGOs, the Code of Conduct discouraged the rescue operations of many NGOs, which were accused of colluding with smugglers.¹⁵⁷

Such a significant decrease in the number of migrant arrivals by sea has been also followed by political propaganda carried on by the current Italian Government concerning the closure of the Italian ports to NGO vessels following SAR operations in the Mediterranean Sea. This propaganda reflects the stricter approach towards migration pursued by the government, which clearly expressed its position by calling for the closure of Italian ports to NGO ships – accusing them of encouraging illegal immigration.

“

Italy no longer wants to be an accomplice of human traffickers and contribute to the business of illegal immigration. Therefore, NGO ships will have to aim for other, non-Italian, ports.”

Minister of the Interior Matteo Salvini
on his Facebook page
15 June 2018

A group of migrants rescued by Sea Watch 3 off the Libyan Coasts, 19 January 2019. Credits: Federico Scoppa/AFP



The escalation culminated in August, with the infamous *Diciotti* case, which resulted in 177 people – including unaccompanied minors – who were denied permission by the Minister of the Interior, Matteo Salvini, to leave their boat, which was docked at the port of Catania, and were allowed to disembark only after five days. The Italian Government has justified its behaviour with regard to the *Diciotti* case by invoking the need to defend Italian borders in the context of an emergency allegedly caused by the massive arrival of migrants, and by the inertia of other EU Member States.¹⁵⁸

Diciotti vessel docked at the port of Catania in August 2018



This approach towards borders control and the closure of ports may represent the consequence of the emerging nationalisms observed in all EU member states. It is characterised by a climate of tension, uncertainty and confusion towards migrants and third country nationals, broadcasted by mass media and politicians. In addition, it generates fear, distrust and a widespread perception of loss in the electorate, finally leading to confinement and defence of personal and national territory.¹⁵⁹

The Italian electoral result of March 2018 – which saw the success of an alliance between the populist winning party and a far-right movement – and the new law decree issued on October, no. 113/2018¹⁶⁰ and then converted into Law no. 132/18 on December¹⁶¹ confirm the described trend. The new legislative measure, in fact, curtails migrants’ entry and regular stay on the territory on several grounds, as well as the rights enjoyed by asylum seekers and refugees.¹⁶²

¹⁵⁸ Francesca Cancellaro and Stefano Zirulia, Controlling Migration through *De Facto* Detention: The Case of the ‘Diciotti’ Italian Ship, 2018, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2018/10/controlling>.

¹⁵⁹ <http://www.novecento.org/in-segnare-leuropa-contemporanea/i-nazionalismi-in-europa-3056/>.

¹⁶⁰ <http://www.gazzettaufficiale.it/eli/id/2018/10/04/18G00140/sg>.

¹⁶¹ <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2018-12-01;132!vig=>.

¹⁶² <http://www.cir-onlus.org/en/2018/09/24/cir-fortemente-preoccupati-dal-decreto-immigrazione/>.

A. BULGARIA

In Bulgaria, there are three immigration detention centres:

Name	Capacity
Busmantsi (in the neighbourhood of the capital Sofia)	400
Lyubimets	300
Elhovo “distribution centre”	currently closed ¹⁶³

Busmantsi and Lyubimets detention centres

In the framework of the Red Line project in 2018, FAR lawyers conducted monitoring visits at the Busmantsi detention centre near Sofia. They interviewed 8 detainees:

Age	Gender	Nationality
45	Male	Turkish
18	Female	Turkish
40	Male	Iraqi
27	Male	Nigerian
19	Male	Syrian
37	Male	Nigerian
25	Male	Guinean
40	Male	Syrian

The Busmantsi detention centre entered operation in 2006, while the Lyubimets detention centre was opened in 2011. Although the Lyubimets detention centre is known to have better material conditions than Busmantsi, the CPT concluded that the “*material conditions were generally very poor*”.¹⁶⁴ The custodial staff are equipped with truncheons and pepper spray as special means. However, CPT is “*concerned by the fact that some custodial staff carried truncheons permanently, including inside the accommodation areas and in full view of detained foreign nationals. This is an intimidating and unjustified practice; the Committee recommends that it cease without delay*”.¹⁶⁵



¹⁶³ Since 29 January 2017 the distribution centre has been undergoing “reorganizational and repair activities, and all foreign nationals are redirected to the other two detention centres of the Migration Directorate, Ministry of the Interior, Decision No.812104-158 of 29.06.2018 on granting access to public information.

¹⁶⁴ CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, Strasbourg, 4 May 2018, https://rm.coe.int/16807c4b74?utm_source=ECRE+Newsletters&utm_campaign=9ebbf0fe1EMAIL_CAMPAIGN_2018_05_25_03_06&utm_medium=email&utm_term=0_3ec9497afd-9ebbf0fe1-42228888, p. 5.

¹⁶⁵ Ibid., para. 46.

The dormitories in both detention centres are equipped with bunk beds and occasionally with other furniture – mainly lockers. The furniture is broken-down and dirty. The bedding is also dirty. The CPT noted that in Lyubimets “mattresses were infested with bed bugs”.¹⁶⁶ Four detainees interviewed by FAR in Busmantsi confided that there were bugs in the rooms and that they had itches from bug bites.



There are bed bugs in the room and cockroaches.
They bite and take blood.”

detainee in Busmantsi detention centre

Both in Busmantsi and Lyubimets, another principal complaint from detainees is the lack of access to the toilets during the night when the dormitories are locked. Some of detainees FAR interviewed said that the room was locked from 10:30 p.m. to 7 or 8 a.m. All of them found it frustrating that during the time when the room was locked, they could not go to the toilet. Busmantsi interviewees also pointed out the poor hygiene of the centre.

During their visit to the Lyubimets centre, the CPT noted that there were 43 minors (including infants) “and absolutely nothing was provided for them, no adapted food and clothes, no toys, and it was difficult to obtain nappies for infants and sanitary materials for women”.¹⁶⁷ Furthermore, CPT observed that the detention was dangerous for women and minors since they had to “share the same dormitories with often unrelated adult men”. The adult men were detained with their families. At the same time women and minors shared dormitories with unknown men, being locked in during the night and without electricity. The electricity is switched off between 11 p.m. and 7 a.m.¹⁶⁸

Number of women and children in immigration detention:¹⁶⁹

Year	Busmantsi		Lyubimets		Elhovo	
	Women	Children	Women	Children	Women	Children
2015	501	1444	705	1450	1782	4573
2016	363	1517	989	1788	1008	2763
2017	305	301	429	427	3	8

Women and children are also detained under the regime of “short-term detention”. According to the statistics of the Ministry of the Interior,¹⁷⁰ so far 35 women and 28 accompanied children have been detained “short-term” in the Busmantsi detention centre, and 15 women and 14 accompanied children – in the Lyubimets detention centre.¹⁷¹

Regarding the activities at the centre, the CPT delegation “could not find a working radio or TV set, there was nothing to read and no board games, and there was no gym and no playground for children”. However, the delegation did find some positives: “an open-door policy during the day and the daily access (between 9 a.m. and noon and between 2 p.m. and 4 p.m.) to a spacious (but bare) asphalted outdoor area”.¹⁷² A detainee interviewed in Busmantsi by FAR said that he could go out to an open air space for one hour in the morning, one hour in the afternoon and one hour in the evening. During the winter he could go out only for one hour once a day. This was also confirmed by another detainee: he was allowed to go out three times per day for one hour – at 12:00, 15:00 and 17:30.

Food in both detention centres is provided three times per day by a catering company. The CPT noted complaints about the insufficient quality of the food. Two interviewed detainees in Busmantsi also complained about the quality of the food, while another one said “The food is not the problem. I want to be free.” According to the CPT report, the detainees in Lyubimets were allowed to make additional purchases at a shop, but the prices there were quite high.

166 Ibid., paras. 48 – 50.

167 Ibid.

168 Ibid., paras. 48 – 50.

169 Source: Ministry of the Interior, Decision No 812104 – 158 of 29 June 2018 to provide access to public information.

170 Decision No 812104 – 158 of 29 June 2018 to provide access to public information.

171 According to the law, unaccompanied minors cannot be detained in immigration detention.

172 CPT, Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, Strasbourg, 4 May 2018, paras. 48-50.

Immigration detainees in Bulgaria are allowed to receive visits by relatives and friends upon prior appointment. The visits are allowed every Tuesday and Thursday between 2pm and 4pm and can last for up to 30 minutes. Lawyers can visit detainees every working day between 9am and 4pm. Detainees are themselves responsible for contracting a lawyer: either through the NGOs which visit the centres or privately.

One of the persistent problems in Bulgarian detention centres, noted also in previous reports,¹⁷³ is the lack of interpreters at the detention centres. Upon its visit to the detention centre in Lyubimets, the CPT noted the absence of interpretation arrangements at the centre and recommended that the *“use of fellow detainees as interpreters should, in principle, be avoided”*.¹⁷⁴ One of the detainees interviewed in the Busmantsi centre did not have copies of the detention and return orders issued against him – since he did not understand their contents and it was not translated to him, he refused to sign the documents and therefore the officials refused to give him copies.

The CPT noted that *“inter-detainee violence was common”*. The Director of the Lyubimets centre reported to the delegation the occurrence of a mass brawl between adult men that happened a few months before their visit. It resulted in injuries, and one of the detainees even required hospitalization. A criminal investigation was opened, and remained ongoing at the time of the visit.¹⁷⁵

There were two psychologists at the Lyubimets center, but at the time of the CPT visit one was on maternity leave and the other on holiday for two weeks. *“The CPT must stress once again the need for particular attention to be paid to the mental health and psychological state of foreign nationals in custody, some of whom are asylum seekers and may have experienced difficult situations – including torture or other forms of ill-treatment – in other countries. The Committee recommends that the Bulgarian authorities strive to improve the level of psychological assistance to foreign nationals detained at the Special Home for Accommodation of Foreigners in Lyubimets, including the provision of interpretation.”*¹⁷⁶

173 Foundation for Access to Rights, Analytical report on the exercise by detained immigrants of the right to be heard in Bulgaria, September 2016.

174 Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, 4 May 2018, paras 59 – 60. See also the evidence collected by FAR under the HEAR project at <http://hear.farbg.eu/evidence-collection/case-studies/majeed/>.

175 Ibid., para. 47.

176 Ibid., para. 57.

B. GREECE

Fylakio pre-removal center

Fylakio Pre-Removal Centre is composed of a desolated yard and a main building accommodating personnel and detainees. The detention wing has a designated capacity of 374 places, divided between five medium sized cells, and a sixth cell, which was designated as the centre's infirmary. Detention conditions in the Fylakio Pre-Removal Centre are unsatisfactory, as in this "gloomy facility", "formerly used as a factory", applicants do not benefit from regular access to fresh air.¹⁷⁷

In particular, a recent Human Rights Watch report described conditions as exceptionally poor, with asylum seekers "being held in dark, dank cells, with overpowering odors in the corridor." Notably, living conditions at the Fylakio pre-removal center are so poor that they could amount to inhuman and degrading treatment. Indeed, female asylum seekers and migrants are being held with unrelated males, and housing fails to meet basic standards such as having toilets and locking doors.¹⁷⁸

“

The toilet had no light and no running water. We didn't have any bedsheets or pillows. There were a bed and a sponge mattress but no covers. We didn't shower for four days, and we used the sink to drink water. The toilets had no locks; even the walls between the toilets were not totally closed off.¹⁷⁹

Nadir, a 21-year-old from Syria, detained at the Fylakio pre-removal center with his six-year-old niece

Human Rights Watch also documented testimonies of women who said that they had been harassed while using the facilities. Concerning medical care, Human Rights Watch reported that necessary equipment and services – including medication and interpreters – are lacking, and that patients are often unable to get care. Even when care is available, access is hindered by a lack of interpreters. Finally, some detainees denounced abuse and mistreatment by police officers through verbal abuse, humiliation, violation of privacy and violence.¹⁸⁰

The European Committee for the Prevention of Torture found during its recent visit to Greece that material conditions at Fylakio Pre-departure Centre were unacceptable. In one of the cells, the delegation met 95 foreign nationals, including families with young children, unaccompanied minors, pregnant women and single adult men, who were detained in cells with about 1m² of living-space per person. These cell was severely overcrowded (many persons were required to share mattresses), filthy and malodorous. Hygiene was extremely poor, hygiene items were not distributed, and the provisions for children were insufficient. The other cells showed similarly poor material conditions. Access to outdoor exercise was only granted for ten to twenty minutes per day.¹⁸¹

Moria RIC

According to the Commissioner for Human Rights of the Council of Europe, who visited Greece from 25 to 29 June 2018, the situation is particularly critical in the RIC of Moria, situated on the island of Lesbos. Indeed, even though the nominal capacity was supposed to be between 2100 and 3100, at the time of her visit the facility hosted 7214 people and in September 2018 it accommodated around 9000 persons. The living conditions are extremely worrying, as the Commissioner observed that asylum seekers were kept in containers or large tents in very precarious condition and with almost no privacy, while others also slept in makeshift shelters, at the mercy of the weather. Serious overcrowding, combined with poor hygiene conditions, insecurity and despair put the human rights of the camp's residents at high risk. The Commissioner observed with great concern that living conditions in reception camps present significant health risks, exacerbated by very limited access to primary healthcare services.¹⁸²

- 177 Greek Council for Refugees, "Borderlines of Despair: First-line reception of asylum seekers at the Greek borders", 25 May 2018, https://www.gcr.gr/index.php/el/news/press-releases-announcements/item/download/426_0006295128d732d891b63180ee384a90, p. 20.
- 178 Human Rights Watch, Greece: Inhumane Conditions at Land Border, July 2018, <https://www.hrw.org/news/2018/07/27/greece-inhumane-conditions-land-border>.
- 179 Ibid.
- 180 Ibid.
- 181 Preliminary observations made by the delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which visited Greece from 10 to 19 April 2018, 1 June 2018, <https://rm.coe.int/16808afaf6>.
- 182 Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018, CommDH(2018)24, 6 November 2018, <https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatovic/16808ea5bd>.

Lesvos island, outside the camp of Moria. Credits: Dimitris Michalakis/GCR



Moreover, inspectors from the Lesvos health directorate stressed the unsuitability of the Moria camp and found that the facility was dangerous for public health and the environment, due to broken toilet waste pipes that resulted in a strong stench and a danger to public health.¹⁸³

Most people, including those who have lived in the camp for a long period of time (sometimes as much as two years or more), lack information regarding their administrative situation and many are said

“to have the impression of being kept in these hotspots on purpose, and that the appalling conditions are maintained to serve as a deterrent”. These conditions generate tensions between asylum seekers and the police, but also between hotspot residents themselves and between residents and local populations, which have resulted in violent clashes and riots. Another concern is raised by children, who are allegedly subjected to sexual violence, and unaccompanied migrant children, who spend most of their time outside the safe zones and are therefore exposed to various risks.¹⁸⁴

Moria was recently described in a BBC report as “the worst refugee camp in the world”. The sewage system does not work and filthy toilet water reaches the tents and mattresses where children sleep. This despite funds for sewage system improvement having been approved for some time. Reports of sexual violence and abuse are on the rise. According to Médecins Sans Frontières the place smells of raw sewage, and there are around 70 people per toilet. Violence in the Moria camp is extreme and people stabbing each other in the lunch queue is an almost daily occurrence. The situation for children is similarly appalling: they have skin conditions caused by the poor hygiene inside, and respiratory diseases from tear gas fired into the camp by police to quell fights. Mental health problems are rife, and workers at Moria say they have to deal with children as young as ten attempting suicide.¹⁸⁵

“

Our children can't sleep for fear of violence.”¹⁸⁶

Sara Khan, living in the Moria camp

As the living conditions in Moria have continued to deteriorate, with a host of reports about suicide attempts, violence and sexual harassment, 19 civil society organisations signed a petition calling for sustainable solutions to both decongest the islands and improve conditions across first receptions centres in the North Aegean Sea area.¹⁸⁷

183 Ibid.

184 Ibid.

185 BBC, Children “attempting suicide” at Greek refugee camp, August 2018, <https://www.bbc.com/news/world-europe-45271194>.

186 Ibid.

187 19 organizations demand decongestion of the islands and immediate improvement in refugee reception conditions, <https://www.gcr.gr/en/news/press-releases-announcements/item/951-19-organizations-demand-decongestion-of-the-islands-and-immediate-improvement-of-refugee-reception-conditions>.

Lesvos island, outside the camp of Moria. Credits: Dimitris Michalakis/GCR



Fylakio RIC

At Fylakio RIC overpopulation is usually not a problem, compared to the situation on the islands. This is because refugees and migrants are transferred daily to other structures in the country.¹⁸⁸ Even when the Evros RIC's capacity was exceeded, applicants still benefited from satisfactory hygiene conditions.¹⁸⁹ During GCR's visit on 20 December 2017, its 240-place capacity was exceeded by approximately 60 applicants, with all applicants, nevertheless, being accommodated in autonomously heated containers, each with showers and toilets of their own, and divided among the RIC's four different wings.

That being said, at the time of GCR visit, more than a third of the RIC's population (112 out of slightly more than 300) was comprised of unaccompanied minors (UAM). Despite the freezing, windy conditions during the visit, some of them (10-12), hung about the fences encompassing each of the RIC's "accommodation" wings and asking the RIS employee who was guiding the GCR team through the RIC for shoes that would fit. Thus, overpopulation, in itself, did not represent a significant problem. What did, on the other hand, was the scarcity of proper clothing (mostly shoes).

Educational and recreational activities were available in the RIC, albeit – as is the case in all RICs – provided through NGOs (METAdraisi) and volunteer-led initiatives from the surrounding area, since the RIC's population of minors have no access to official education. Sources even reported the availability of classes for children and adults who wished to learn Greek.¹⁹⁰

Substantial gaps in the provision of reception and identification services, including medical services, are currently reported at Fylakio RIC. For example, a lack of interpretation in the Farsi language and a lack of medical and social-psychological services was reported as of March 2018, due to which, *inter alia*, the identification of persons belonging to vulnerable groups is not possible.¹⁹¹ Since April 2018, MSF has started providing medical services of primary medical treatment, as the only staff in the Fylakio was composed of three nurses. However, medical examination to prove vulnerability related to the asylum process can only be undertaken by state agents according to Law 4540/2018.¹⁹²

188 ΙΑΣΩΝ ΠΙΠΙΝΗΣ, "Το iefimerida στο Κέντρο Υποδοχής Εβρου: 9 φορές πάνω οι ροές μεταναστών, 119 ασυνόδευτα παιδιά [εικόνες]", iefimerida.gr, 21 May 2018, <http://www.iefimerida.gr/news/417879/iefimerida-sto-kentro-ypodohis-ev-roy-9-fores-pano-oi-roes-metanas-ton-119-asynodeyta>.

189 Greek Council for Refugees, "Borderlines of Despair: First-line reception of asylum seekers at the Greek borders", 25 May 2018, https://www.gcr.gr/index.php/el/news/press-releases-announcements/item/download/426_0006295128d732d-891b63180ee384a90, p. 37.

190 ΙΑΣΩΝ ΠΙΠΙΝΗΣ, "Το iefimerida στο Κέντρο Υποδοχής Εβρου: 9 φορές πάνω οι ροές μεταναστών, 119 ασυνόδευτα παιδιά [εικόνες]", iefimerida.gr, 21 May 2018, <http://www.iefimerida.gr/news/417879/iefimerida-sto-kentro-ypodohis-ev-roy-9-fores-pano-oi-roes-metanas-ton-119-asynodeyta>.

191 UNHCR, Explanatory Memorandum pertaining to UNHCR's submission to the Committee of Ministers of the Council of Europe on developments in the management of asylum and reception in Greece, May 2017, 10.

192 <https://www.dikaiologitika.gr/eidhseis/ygeia/219532/ektaktos-ston-ev-ro-oi-giatroi-xoris-synora-kataggel-loun-tin-apousia-iatrikis-perithalpsis>.

C. HUNGARY

Transit zones Röszke and Tompa

The following information on conditions in the transit zones was gathered through interviews with people who were actually detained in the transit zone, from the reports of international organisations that visited the transit zones, the AIDA Country report on Hungary, the Hungarian Helsinki Committee report *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*¹⁹³ and news outlets,¹⁹⁴ as the Hungarian Helsinki Committee does not have access to the transit zones in order to conduct monitoring. The HHC had access until summer 2017, but authorities terminated cooperation agreements with the HHC and denied access to police detention, prisons and immigration detention facilities after two decades of cooperation and 2000+ visits.¹⁹⁵

While there are limited statistics available on the exact **demographic make-up of the asylum-seeking population detained in the transit zones** (such as the proportion of women and children detained and the nationality of the detainees), considering that the vast majority of asylum seekers are placed in these transit zones, a good indication can be gleaned from the general statistics made available by the IAO. According to these figures, in 2017, 36.5% of applications were made by women (up from 22% the year before), while 45% were filed by children.¹⁹⁶

The transit zones of Tompa and Röszke are remotely located and built into the barbed-wire fence erected along the Serbian-Hungarian border in September 2015. While Röszke has a maximum reasonable **capacity** of 450 occupants, Tompa can accommodate just 250. In both transit zones, accommodation is provided in **shipping containers** measuring approximately 13 square metres in size (circa. 4x3 metres), each fitted with five beds. When five people occupy one of these containers, there is no space left to move around, therefore the containers are **overcrowded**. Five interviewed detainees mentioned that they did not have enough space to move around in the container. The interviewees also complained about the hygiene of the sanitary facilities.

Accommodation in a shipping container at Tompa transit zone.
Photo taken on 6 April 2017. Credits: Máté Halmos



“

We were five unaccompanied minors in the container. We could not do anything in the container apart from sleeping; there was no space to move around freely. The container was filled with the beds and the lockers.”

Afghan unaccompanied minor, six weeks in Röszke transit zone

These sleeping units are divided between **different sectors** for families, unaccompanied minors (aged 14 and above), single men, and single women. Within each sector, additional shipping containers serve as a canteen, a community room, a room for social workers, and bathrooms, and these are arranged in a rectangular shape with a courtyard in the middle containing a playground and a ping-pong table. Separate accommodation for vulnerable asylum seekers amongst the above mentioned groups is missing; single women and unaccompanied girls, for instance, are usually held together in a sector with families (and therefore men and boys), and in general there are no private women-only spaces.¹⁹⁷

Detainees are provided **meals** three times a day (five times for minors under the age of 14). Generally, the detainees interviewed complained about the quality of the food and most of them said that the food they received was not sufficient. In Tompa asylum seekers can buy additional food twice a week and there are electric stoves. In Röszke, buying additional food is only possible once a week and there are no electric stoves. Three detainees interviewed complained about the lack of cooking facilities. One interviewee said that when they told the social worker that they could not identify whether the meat they received was pork, they were told that they were not in a hotel.

“

If we complained about something, they told us the door to Serbia is always open.”

Afghan unaccompanied minor, three months in the Röszke transit zone

Each sector has a TV and WiFi, but there are no public phones or computers, and the WiFi connection has been reported as being very poor, allowing occupants of the transit zone to send messages but not to make calls. Seven interviewed detainees said that the WIFI did not work, so they had to use their own Serbian SIM card to have access to the internet. This makes **contact with the outside world, including legal representatives, particularly difficult.**¹⁹⁸

Barbed wire surrounds the accommodation area at Tompa transit zone.
Photo taken in August 2017.



The entire transit zone and each individual sector is surrounded by a razor wire fence and is patrolled by police officers and armed security guards. Asylum seekers must ask permission to leave their assigned sector – for instance to see medical staff, go to an interview or meet a legal representative – and, if granted, they are always escorted by police officers.¹⁹⁹ There are cameras in every corner. As numerous observers have noted, the transit zones are built and managed so as to resemble high-security prisons. The **carceral nature** of existence in the transit zones have been confirmed by reports published by, for instance, the European Commission against Racism and Intolerance (ECRI)²⁰⁰ and

- 197 Anikó Bakonyi, Hungarian Helsinki Committee, Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system, 26 June 2018, pp. 7-14, <https://www.helsinki.hu/en/safety-net-torn-apart/>.
- 198 AIDA Country report Hungary; Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017, <https://rm.coe.int/16808d6f12>.
- 199 Budapest Beacon, “Hungary’s transit zones are prisons where pregnant women are handcuffed and children go hungry”, 14 June 2017. Available at: <http://bit.ly/2HApcIn>.
- 200 European Commission against Racism and Intolerance, ECRI Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up, 15 May 2018, p. 5, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-IFU-V-2018-024-ENG.pdf>.

CPT, which concluded that such an environment cannot be considered adequate for the accommodation of asylum seekers, even less so when these include families and children.²⁰¹ Security guards are even present during the asylum interviews, standing or sitting behind the asylum seekers.



They didn't tell me why we were detained. We were under constant control, by police, social workers and cameras."

Afghan man with family, 27 days in Röszke transit zone

Over the summer, the weather in Hungary can get **very hot** (often exceeding 30 degrees during the day), and in these conditions the white gravel in the courtyard absorbs the heat and makes it difficult to be outside. As of August 2017, there are parasols available in the courtyard for shade, as well as ventilator units in the sleeping containers, although proper air conditioning is limited to the canteen and community centre containers. Still, residents of the transit zones – often families with young children – complain about the excessive heat over the summer, the inadequate number of parasols and the bugs, which come into the containers and bite them. It is impossible to make fresh air circulate freely inside the containers, since the windows and the doors are on the same side. An interviewed detainee said that during summer the containers became extremely hot, so they spent most of their time in the kitchen, which had air conditioning. He said that he even slept there. When it rains the gravel cannot drain and the **courtyard floods**, making it impossible to use the open-air part of the sector.²⁰² Asylum seekers also complained that whenever they want to use the bathroom or shower during winter, they have to walk from their containers to the bathroom containers through the freezing courtyard.

201 Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017, <https://rm.coe.int/16808d6f12>.

202 As it can be seen on a video recording shot by asylum seekers staying in the transit zone besides children asking for release: <http://www.rudaw.net/sorani/world/240520173>.

Yard and playground at Tompa transit zone.

Photo taken on 6 April 2017. Credits: Máté Halmos



With regards to **healthcare**, each transit zone contains a medical unit able to accommodate up to ten people, while a general practitioner is made available three days a week and a paediatrician twice a week for two hours. Nurses are present every day, while there is also a field surgeon on hand 24 hours a day, seven days a week. If an asylum seeker wants to visit the medical container, he/she is accompanied by at least two armed security guards. In the past it was reported that when asylum seekers were taken out of the transit zones to see a medical specialist they were handcuffed. However, this practice is no longer in use. They are still nevertheless escorted to a hospital by armed policemen as if they were criminals.

“

Even when we went to the doctors the police took us there. I felt like a prisoner, as if I had killed someone. The doctors did nothing; no matter what problems we had they only ever gave us paracetamol.”

Afghan unaccompanied minor, three months in Röszke transit zone

The **psychologist** only started to visit the transit zones in mid-November 2017. No such service was provided during two previous years of the transit zones” operation. The psychologist visits each transit zone for six hours a week. When this service first began there was no interpretation. The psychologist would use another asylum seeker to interpret, and sometimes the interpreters of the UNHCR. Asylum seekers also complained that their children were used for interpretation, which is clearly not in their best interest. Now the psychologist can request an interpreter if necessary. There are, however, reports of issues regarding interpretation and access.²⁰³ The **psychiatrist** started to visit the transit zones on 24 January 2018. The visit takes place every Wednesday for 3-4 hours for each transit zone.

“

Psychologically we were in trouble there. Even to this very day I am afraid and can hardly believe that finally I am free.”

Iraqi couple 11.5 months in Tompa transit zone

Owing to the harsh living conditions, the transit zones are **highly inappropriate for accommodating vulnerable individuals**, even for a short period of time. This claim is supported by the fact that the European Court of Human Rights has already granted numerous interim measure requests, indicating to the Hungarian government that they should provide applicants with adequate conditions, in line with Article 3 of the Convention.²⁰⁴

“

4-5 police officers always stand behind the door. Sometimes they even shouted at the children who were playing in the yard and told them to go back to their containers. The police were not nice. It felt as if we were prisoners. ”

Afghan woman, 3 months in Röszke transit zone

NGO access to the transit zones is heavily restricted by the Hungarian authorities. Currently, only the Charity Council, consisting of six organisations,²⁰⁵ is present in the transit zones on an irregular basis, and they mainly provide humanitarian assistance and some activities. Support and assistance measures for vulnerable asylum seekers are in very short supply in the transit zones, while special services for survivors of torture and victims of domestic and gender-based violence do not exist.

“

During the 11 months in Tompa we hardly got any clothes, although we asked. I asked for a winter coat but I didn't get it. The Red Cross told me that they only had raincoats and had no money to buy winter coats. In the end, one of the social workers gave me a jacket.”

Iraqi couple 11.5 months in Tompa transit zone

Social workers in the transit zones deal mainly with the material needs of the detainees (such as distributing donations and running programmes), and are not qualified to identify vulnerabilities and provide tailored support.²⁰⁶ Additionally, no organisation is permitted to conduct monitoring visits in the transit zones which would result in the publication of reports, and the Ombudsman's office did not conduct any visit or publish any report under the scope of OPCAT NPM, since they follow the Government's position on transit zones not being places of detention.

- 203 Anikó Bakonyi, Hungarian Helsinki Committee, Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system, 26 June 2018, pp. 7-14, <https://www.helsinki.hu/en/safety-net-torn-apart/>, p. 11.
- 204 AIDA, Country report Hungary, p. 90.
- 205 These are: Hungarian Caritas, Hungarian Charity Service of the Order of Malta, Hungarian Interchurch Aid, Hungarian Red Cross, Hungarian Baptist Aid and Hungarian Reformed Church.
- 206 Anikó Bakonyi, Hungarian Helsinki Committee, Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system, 26 June 2018, pp. 7-14, <https://www.helsinki.hu/en/safety-net-torn-apart/>.

“

There were many social workers, but they only played with their mobiles. They did not speak English and could hardly tolerate the children. The school was more like a playroom. The teacher came for like an hour: they just show that they do something. Everything is symbolic here.”

Afghan man with family, 3.5 months in Röszke transit zone

When the transit zone first entered operation there was no formal education provided (between October 2015 and September 2017), other than very irregular activities organised for very young children by social workers. Education is now provided during the school year (between September and June) by remedial teachers (gyógypedagógusok) who are trained only to teach children with disabilities, and thus lack experience working with a standard curriculum. They provide activities between 9-12 am for 3x45 minutes. They follow a curriculum specifically designed for the transit zones. They teach Hungarian, Maths (sometimes), developmental games, arts and crafts. However, the lack of a particular curriculum and provision of a recognised school certificate means that this cannot be considered proper school education.²⁰⁷ Asylum seekers complained that some teachers did not speak English, only Hungarian, which made the educational activities meaningless.

“

There was a teacher who came to the transit zone on weekdays to teach us but it was pointless because she did not speak English and we had no translator. This way we had nothing to do; we were sitting around and thinking a lot – mostly of bad things – during the day. We also slept a lot because we had nothing else to do. We went out sometimes to play football but the guards took the ball away from us so we could not play anymore. ”

Afghan unaccompanied minor, 1.5 months in Röszke transit zone

207 HHC, Safety-Net Torn Apart, p. 12.
208 Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017, <https://rm.coe.int/16808d6f12>.

Some asylum seekers over 16 years of age complained that the authorities did not allow them to attend the educational activities, since the compulsory age until which children must attend school is 16. Detainees interviewed complained about the lack of activities for adults in both the Röszke and Tompa transit zones.

“

Everyone in the transit felt nervous and upset, because they were closed. People were getting aggressive because they were there long time.”

Afghan man with family, 27 days in the Röszke transit zone

Since May 2018, interpretation is provided three days a week. The interpreter in Tompa speaks Arabic but not Kurdish, which is a huge problem since many asylum seekers speak only Kurdish (around 80% of the asylum seekers in Tompa).

Some asylum seekers complained that the paramedic (felcser) and the doctors in the transit zone force them to take pills which make them feel dizzy, weak and sleepy. Medication prevents them from participating in meaningful activities e.g. workshops and playing soccer. Four interviewed detainees complained that they did not receive proper medication; the only medication they generally got were painkillers.

“

The doctor gives the same pills to everyone, so why should I go to see him, even if I have a problem?”

Afghan man with family, 27 days in Röszke transit zone

The CPT also found during its visit in October 2017 that the transit zones are not adequate for holding foreign nationals for prolonged periods.²⁰⁸

209 Source: Ministry of the Interior – Department for Civil Liberties and Immigration.

210 Ibid. Note: The National Guarantor notes that during the monitoring activity carried out in 2017, it registered a longer stay than the one reported by the Ministry of the Interior – Department for Civil Liberties and Immigration.

211 National Guarantor for the Rights of persons detained or deprived of their Liberty, Report on visits to CIEs and Hotspot in Italy 2016/2017, pp. 25-29, <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d-4dca4f9c.pdf>.

212 Council of Europe, Report of the fact-finding mission to Italy on October 2016 by Ambassador Tomas Bocek, special representative of the Secretary General on Migration and Refugees, March 2017, p.4, http://unipdcentro-dirittiumani.it/public/docs/Report_fact-finding_mission_Italy_Tomas_Bocek_mar_2017.pdf.

213 AIDA Country report Italy, March 2018, p. 106.

214 See Hotspot leaks: Dossier sulla frontiera di Taranto, Stamp – Sostegno ai Transiti, Accoglienza a Migranti e ai Profughi, p. 23, <http://www.stamproma.info/wp-content/uploads/2017/06/DOSSIER-stamp.pdf>; see also http://www.beyondtheborders.eu/wp-content/uploads/2018/04/Advocacy-Paper-hotspot_DEF-1.pdf.

215 Aida Country Report Italy, March 2018, p. 106, <http://www.asylumineurope.org/reports/country/italy>; see also <https://www.asgi.it/asilo-e-protezione-internazionale/hotspot-minori-stranieri-cedu-taranto/>.

216 CIR Interview with the National Guarantor for the Rights of persons detained or deprived of their Liberty, on 22.6.18 in Rome.

217 <https://www.laringhiera.net/la-richiesta-hotspot-di-taranto-ormai-deserto-quel-centro-va-chiuso/>.

D. ITALY

Taranto hotspot

The Taranto hotspot has been active since March 2016 and is located in the industrial area in the north of the city, very close to the ILVA iron and steel plants (so close, in fact, that there is concern for the health of operators who breathe ferrous dust every day).

Migrant entries in 2017 ²⁰⁹	9 022
Capacity as of April 2018	400
Occupancy as of 24 November 2017	50
Adults average stay in 2017 ²⁰¹⁰	5.5 days

The centre is managed directly by the municipality of Taranto, which provides material goods, and by cooperatives and associations, which deal with service provision. The health care service is entrusted to the local health unit.²¹¹

The facility is surrounded by fences and consists of containers, generally intended for offices, and of three big tents for the accommodation of migrants, one for men, one for women and one used as a canteen. Mattresses are put next to each other without any personal space. Smaller tents (with twelve beds each) are provided for families. In the common outdoor areas, there are tables and chairs and there is also a play area for children, but there are no organized activities. There are also drink vending machines. There are no telephone booths. The entrance is guarded by the military, while security inside is maintained by the police.

Once people had been identified and fingerprinted, they were provided with a pass which allows them to leave the hotspots during the day.²¹² However, this provision only applied to adults, whereas UAMs had no permission to leave the centre during the day. As a result, UAMs often declared false age in order to be allowed to exit.

On the occasion of a visit by ASGI in July 2017, they found 80 unaccompanied children – some of whom had been there since May 2017 – in a situation of *de facto* detention together with adults in a single tent surrounded by high metal grids and guarded by army soldiers, without any written detention order or information on the possibility to seek asylum.²¹³

In 2017, foreigners found anywhere on the national territory or rejected at the borders (for example in Ventimiglia), were transferred to the hotspot of Taranto for further identification. Among them were UAMs who had escaped from reception centres, as well as adults with valid residence permits who were on the verge of crossing the border. The aim of this practice was reportedly to “lighten the borders”.²¹⁴

The Ministry of the Interior arranged the closure of the hotspot in March 2018. The violations that influenced this decision concerned prolonged detention beyond the 48 hours provided by law under precarious conditions, mainly due to the overcrowding of the centre.²¹⁵ Moreover, various irregularities were found with regard to the management of the centre.

On 1 June 2018, the hotspot was reopened. However, it does not currently host migrants who reached Italy by sea,²¹⁶ but rather, based on the recent information that CIR acquired, it hosts people rejected at the French border. They are forced to board private buses which load them up around Italy and transfer them to Taranto, usually without documents, clothing, and with health concerns (many with infectious diseases). After fingerprinting at Taranto, if they request reception they are accompanied to the assigned centre (within the region of Puglia) otherwise they are set free.

The Association *Marco Pannella* explained, “Most of them do not want to stay in Italy, which is only a place to reach other countries, where they basically await the rest of the family. From here, they try to return to Ventimiglia, but if they are reported, despite already being identified, they return to Taranto. And the *merry-go-round* begins again. The infinite game of the Ventimiglia-Taranto goose. One person has gone back and forth more than three times.”²¹⁷

From January 2018 to September 2018, Taranto hosted 582 people. The low numbers hosted in the facility – which has been found empty by several different delegations – confirms the absence of a “migrant invasion” as broadcasted by the government in the mass media.

Lampedusa hotspot

The Lampedusa hotspot has been established within the previous CIE (Centre for Identification and Expulsion) and consequently, it retains its structural characteristics, such as bars, gates, metal mesh, etc. It is far from the inhabited centre of the island, in the district of Imbriacola. The managing bodies are the Italian Red Cross and the Confraternity of the Misericordia of Italy.

Migrant entries in 2017 ²¹⁸	8 940
Capacity as of April 2018	96
Occupancy as of 24 November 2017	272 ²¹⁹
Adults average stay in 2017	10.5 days

The structure consists of prefabricated pavilions in which men and women with children are housed together without any kind of segregation. The dorms consist of rooms with 12 beds, but rooms with bunk beds can host 24 or even 36 people if the mattress under the lower bed is pulled out.²²⁰ Beds are arranged next to each other. Besides beds there is nothing else in the rooms and they are in a clear state of neglect.

In 2016/2017 the hygienic conditions of the centre were barely acceptable.²²¹ There were no common areas to eat, pray or do other activities. On the other hand, there was a room used for activities for children and another one for personal interviews. There was no covered space where newly arrived migrants could wait for their identification procedures to be conducted, and everything was done outdoors in all seasons.

Young migrant trying to escape by the hole in the fence in the hotspot of Lampedusa. Picture taken in March 2018. Credits: Alberto Pozzoli / AFP



People were not allowed to exit the hotspot even after identification. Unaccompanied minors were kept there for periods exceeding one month. Information provided before pre-identification was insufficient and the kit for food and clothes as well as basic needs were only provided following fingerprinting.²²²

The Lampedusa hotspot was partially closed in March 2018.²²³ The closure followed an arson incident, and was the result of structural deficiencies and poor reception conditions.²²⁴ The centre, often overcrowded, did not guarantee acceptable standards in particular for vulnerable categories. In March 2018 a delegation of ASGI, CILD – Italian Coalition for Liberties and Civil Rights (CIR is a member) and Indie Watch visited the centre and detected several human rights violations that were reported to the Prosecutor of the Republic of Agrigento, the Prefecture, the ASL of Palermo and the Guarantor of persons deprived of their liberty. In particular, the delegation found a profound ambiguity about the very nature of the hotspot and its usage as a detention facility. Indeed, despite the entrance gate being closed, and no procedures

governing entry and exit from the hotspot, migrants could easily come and go through holes in the fences.²²⁵ The organisations also witnessed obstacles regarding the registration of international protection requests and the issuance of residence permits for asylum seekers, thereby confining them in the hotspot for several months.²²⁶ The Guarantor also stressed the serious structural deficiencies and excessive length of stay of migrants in the centre that went well beyond the 48 hours stipulated as the legal limit.²²⁷

Since August 2018 the center has once again been fully open, with a capacity of 96 places, in order to cope with small spontaneous landings.²²⁸ With reference to these arrivals, mainly by Tunisians, CILD detected ongoing discrimination, which included hindering their access to the international protection procedure and prolonging their stay in the hotspot.²²⁹

“

In theory, after 48 hours the migrants are moved to the mainland, but it happens that times get longer. Our hotspot has never been empty during the summer; on the contrary we have even exceeded the 90-100 places available.”

Totò Martello, the mayor of the island

Messina hotspot

The Messina hotspot began operation on 30 September 2017. CIR conducted a monitoring visit in connection with the “Red line project” on 23 July 2018. The structure is located near to the city center, in the former “Gasparro” barracks, in Rione Bisconte.

Migrant entries in 2017 ²³⁰	1 315
Capacity as of April 2018	250
Occupancy as of 24 November 2017	0
Adults average stay in 2017 ²³¹	3 days

Part of the former barracks is divided into two facilities, a first reception center and the hotspot, managed by two different cooperatives. The reception center for adult men is run by the Senis Hospes cooperative and can accommodate up to 200 people in three large rooms. Beyond the wire mesh separating the two areas there is the hotspot, run by the cooperative Badia Grande consisting of prefabricated buildings with a capacity for 250 people.

The hotspot area consists of two levels of containers: the ground level is for the immigration office, the forensic police, Frontex, EASO and the medical assistance. The upper level of containers is not used, in accordance with security orders given by the Prefecture. There is a covered big tent where people can wait during the identification procedure. The overall operations are arranged in the containers: medical assistance, pre-identification and identification. In a different area, a residential one, there are containers with beds, equipped with heating and cooling system, four bunk beds and lockers. There are approximately 25 containers. About three containers are fenced off, since they are reserved for single-women or for women with children and for families. One container, generally used as a recreational area, is reserved for individual interviews between migrants and legal operators/ social assistants/psychologists. Another separated area is reserved for bathrooms and toilets, which are separated for women and men. A big white tent is used for the canteen.

- 225 Scenari di frontiera: il caso Lampedusa. L'approccio hotspot e le sue possibili evoluzioni alla luce del Decreto legge n. 113/2018, p. 4, http://www.indiewatch.org/wp-content/uploads/2018/11/Lampedusa_web.pdf.
- 226 ASGI, “Chiuso l’hotspot di Lampedusa-CILD, ASGI e IndieWatch: “Condizioni disumane e violazioni dei diritti umani”, 14 March 2018, <http://bit.ly/2FUTswm>.
- 227 <https://www.internazionale.it/bloc-notes/annalisa-camilli/2018/03/15/hotspot-lampedusa-chiuso>.
- 228 National Guarantor for the Rights of persons detained or deprived of their Liberty, Report to the Parliament, June 2018, p. 233.
- 229 See <https://cild.eu/blog/2018/07/06/nuove-violazioni-dei-diritti-umani-nell-hotspot-di-lampedusa/>.
- 230 Source: Ministry of the Interior - Department for Civil Liberties and Immigration.
- 231 Ibid. Note: the National Guarantor notes that during the monitoring activity carried out in 2017, it registered longer stay than the one reported by the Ministry of the Interior - Department for Civil Liberties and Immigration.

In general, the structure offers very good conditions and hygiene, since it has only been in operation for one year. The facility is entirely fenced with very high walls and nets. Police and military are always present within the facility, even when there are no migrants inside. At the moment of disembarkation, the managing body provides migrants with a set of blankets, food and water, but the bus driver who brings them to the hotspot does not allow them to eat or drink. They receive three phone cards, each one with a value of 15 euros, to call from the telephone boxes, which are in the hotspot.

IOM, UNHCR and Save the Children are the organizations allowed entrance to the hotspot. There are no lawyers, only the NGOs' legal operators, including the ones provided by Badia Grande.

As reported by the coordinator of the team of Badia Grande, the transfers from the hotspot to the reception centers are organized within 24-48 hours. Only in case of very large disembarkations – which occurred only on two occasions (600 people in November 2017 and 400 in March 2018) – do they stay there for three days.²³² Only those who have expressed their will to apply for asylum and do not match any records on the AFIS (Automatic Fingerprints Identification System) controls are allowed to exit the hotspot between 9 am and 6 pm, with a card provided by Badia Grande.

On the other side, people interviewed by UNHCR²³³ and CIR confirmed a longer stay within the facility (5-7 days), without the possibility of going out before and after identification and fingerprinting procedures. At the same time, considering their physical conditions on the journey, this time span has been perceived, in some cases, as adequate to be able to recover.

“

Not going out after my rescue was not truly a problem. I needed to rest, I was just grateful they rescued me.”

A.M. 1/1/99 Ghana

Trapani hotspot

Migrant entries in 2017 ²³⁴	9 247
Capacity as of April 2018	400
Occupancy as of 24 November 2017	5
Adults average stay in 2017 ²³⁵	6,1 days

The structure is located in the suburbs of Trapani, in a district called Milo, about 10 km from the port. The hotspot of Trapani was built taking advantage of the previous CIE (Identification and Expulsion Centre) and, despite some structural interventions, there are still fences, gates and bars. It has been operational since December 2015 and until May 2017 it functioned as a closed centre.

The centre is managed by the cooperative “Badia Grande”. It consists of several one-story buildings, dedicated to the managing body, the Immigration office, EASO and the Territorial Commission for the recognition of international protection. Other buildings are divided into six sectors, separated by yellow iron fences and used for the reception of applicants for international protection. Sectors host minors, families, single women and men. Each sector consists of four small buildings, each equipped with two bathrooms, two dormitories with bunk beds and a TV room. Within the sector, the buildings have a common external space closed by a fence.

The accommodation rooms are quite large, with up to nine bunk-beds, and are not equipped with doors, thus not guaranteeing the necessary privacy, or the acoustic separation from the “social room” where a small television is located. Therefore, such accommodation can be considered as strictly temporary to provide shelter to migrants and does not appear to be suitable to accommodate people beyond 24/48 hours. In addition, the entire structure is not accessible for disabled people.

The average stay for adults is 6 days, whereas unaccompanied minors could stay even 10 days waiting for the transfer into *ad hoc* reception centres.²³⁶

232 CIR interview with Hotspot managing body Badia Grande in Messina on 23.7.2018.

233 CIR telephone interview with UNHCR legal operator in Messina Hotspot on 21.6.2018.

234 Source: Ministry of the Interior - Department for Civil Liberties and Immigration.

235 Idem. Note: the National Guarantor notes that during the monitoring activity carried out in 2017, it registered longer stay than the one reported by the Ministry of the Interior - Department for Civil Liberties and Immigration.

236 CIR Interviews with minor asylum seekers held on 5.6.2018 in Trapani Hotspot.

Outside the sectors, there is a dining hall, a small library, a playroom for children, an infirmary and a room where psychological services are provided on request. Health service is provided by the managing body, while the local Health unit intervenes only in case of need.

Sectors are divided by fences and guarded by military, Carabinieri and Police. Migrants are not allowed to leave the sectors, except for specific needs, until the whole identification phase has been completed. People already identified and fingerprinted are allowed to exit from the facility – from 9 to 17.00 – and to use a shuttle service provided by the managing body. However, Tunisian citizens interviewed declared that they were not aware of such a shuttle service or even of the possibility to go out.²³⁷

In September 2018, 130 Tunisians were transferred to Trapani hotspot in order to be repatriated by charter flights from Palermo. This raised questions on the nature of the hotspot, in this case assimilated to a CPR (pre-removal centre). In fact, by decree dated 24 September 2018, the Minister of Interior ordered that the facility starts functioning as a CPR.²³⁸

Hotspot of Trapani – former CIE – and now CPR



237 CIR Interviews with adult asylum seekers held on 5.6.2018 in Trapani Hotspot.

238 http://www.prefettura.it/trapani/news/Bandi_di_gara_e_concorsi:Selezione_per_la_partecipazione_al_corso_di_formatione_in_operatori_esperti_in_violenza_di_prossimita_-7262044.htm.

VI. CASE LAW REGARDING “RED LINE” DETENTION CENTRES

A. BULGARIA

Immigration detention of asylum seekers upon entry

In 2018 FAR asked the State Agency for Refugees (SAR) whether they carry out asylum interviews with immigration detainees at the centres of the Migration Directorate (SHTAFs) and, if so, on what legal grounds. SAR replied that “(i)n case there are obstacles for the foreigner to be handed over for accommodation by SAR, the procedural actions are carried out in the SHTAF until the obstacles for handing over the foreigner cease to exist”.²³⁹ It has not been explained what these “obstacles” for releasing the person from immigration detention are, in view of the fact the asylum procedure ceases the implementation of the return and thus immigration detention does not serve a lawful purpose.

Lawyers in Bulgaria have challenged in court the lawfulness of asylum decisions taken based on asylum procedures carried out in detention under Article 15 of the EU Return Directive.²⁴⁰ The national court refused, however, to acknowledge that the infringement of the asylum procedure in such cases had been a substantial one, because “the outcome of the asylum procedure would have been the same, even if the asylum seeker had not been in immigration detention”.²⁴¹ The court based its conclusion on the reasoning that, though in conditions of immigration detention, the asylum interview was conducted by a competent authority with an interpreter. In spite of this discouraging case law, in 2018 a breakthrough was achieved in the case of a person assisted by FAR lawyers. In Judgment No 977 of 16 February 2018,

case No 2311/2017, the Sofia City Administrative Court found that the conduct of the personal interview with the applicant in an immigration detention centre constituted a serious breach of the administrative procedural rules and thus rendered the negative asylum decision unlawful.

By a ruling of 4 January 2018²⁴² the Supreme Administrative Court ordered the immediate release from immigration detention of an asylum seeker, stating that the submission of an application for international protection is a statutory fact that puts an end to immigration detention. For the first time the highest Bulgarian court ruled that asylum seekers could directly apply to the court for their immediate release from immigration detention once they have lodged a first application for international protection. The reasoning of the court was that the return procedure had been suspended and therefore the detention of asylum seekers pending removal served no lawful purpose.

“Short term” detention

In the only case, in which a “short-term” detainee managed to appeal his “accommodation” so far,²⁴³ the court found the order to be unlawful. In the first place, the national court noted that the fact that the person had already been issued a return decision discredited the purpose of “short-term” detention, which was to decide on the subsequent measures to be taken. Secondly, the court noted that the order did not meet the standard of proportionality as it contained no individual reasoning, and there was no differentiated approach in deciding on the duration of the measure.²⁴⁴

239 State Agency for Refugees, Decision No. RD05-466 of 19.06.2018 on granting access to public information.

240 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.

241 ECRE, Preliminary Deference? The impact of judgements of the Court of Justice of the EU in cases X.Y.Z., A.B.C. and CIMADE and Gisti on national law and the use of the EU Charter of Fundamental Rights, March 2017, pp. 61, 62, <https://www.ecre.org/wp-content/uploads/2017/03/CJEU-study-Feb-2017-NEW.pdf>.

242 Supreme Administrative Court of the Republic of Bulgaria, Ruling No.77, 4 January 2018, No. 13014/2017.

243 Detainees are not motivated to appeal, because the court judgment is likely to be issued following the expiration of the maximum length of short-term detention (30 days). Thus, detainees do not see the court appeal as an effective remedy.

244 Sofia City Administrative Court, Judgement of 17 May 2018 in case No.4050/2018.

B. GREECE

Geographical restriction on the islands

The decision imposing geographical restrictions was challenged successfully by GCR and five bar associations. The Council of State held that the practice of geographical restriction had resulted in unequal distribution of asylum seekers across Greece and put significant pressure on the islands when compared to other regions, which negatively affected, among other things, their economy and public order. This comes atop widely-available evidence that geographical restriction has led to people being accommodated for prolonged periods in overcrowded facilities, with insufficient food and water supplies, poor sanitation and highly problematic security conditions. Additionally, the Council of State highlighted that the Decision of the Asylum Service Director did not set out legal grounds for the imposition of restrictions on asylum seekers' freedom of movement, and could find no serious reasons of public interest to justify the necessity of the restriction in accordance with Article 31(2) of the Refugee Convention.²⁴⁵

A few days after the annulment, a new administrative decision signed by the new Director of the Asylum Service imposed ad novo a general geographical restriction upon all asylum seekers on the islands. GCR has asked for the annulment of this new decision at the Greek Council of the State. On 5 October 2018 there was a new administrative decision from which are exempted all those who are explicitly eligible for family reunification, as well as vulnerable applicants. However, it bears great similarity to the first one. The case is still pending, and is to be examined on 29 January 2019.²⁴⁶

245 <https://www.ecre.org/top-greek-court-annuls-island-restriction-for-new-asylum-seekers/>.

246 <https://www.gcr.gr/en/news/press-releases-announcements/item/986-anakoinosi-tou-esp-gia-nea-apofasi-geografikou-periorismou-tis-ypiresias-asylou>.

247 <https://www.gcr.gr/en/ekdoseis-media/echr-cases/case-decision-before-greek-courts/item/1008-apofasi-349-2017-di-oikitikoy-protodikeiou-komotiniis-antirriseis-kata-kratisis>.

Pre-RIC detention in Evros

Komotini Administrative Court of First Instance – Decision no. 349/2017

A 20-year-old Afghan national was arrested on 8 March 2017 for having entered and stayed illegally in Greece. He was led to the Fylakio RIC on 16 August 2017 to be identified and he expressed his willingness to apply for asylum. On 24 August 2017, the police issued a deportation act but still he was not set free. He was not informed about the procedure in his language and he was not identified as vulnerable, even though he had a prosthetic eye and his leg was seriously injured due to the bombardment of his house by the Taliban. Moreover, he suffered from post-traumatic stress disorder. Since he had the status of an asylum seeker and he has been recognized as vulnerable, the court ruled that he shall be set free.²⁴⁷

Komotini Administrative Court of First Instance – Decision no. 241/2018

Objections against the detention in view of transfer to the RIC

Facts: The applicant was detained at the border upon arrival, as he entered Greece without complying with the legal formalities. He has remained in detention since March 2018, in view of the need to transfer him to the Orestiada RIC.

Admissibility: The applicant who entered without the legal formalities needs to be directly transferred to the competent RIC, to go through all procedures of reception and identification. As he will not be released at the time between the verification of the illegal entry and his transfer to the RIC, he has to be considered as a “detainee”, in the sense of Article 5 of the ECHR, and he has to be notified of any decision to detain him. This is a separate decision, which cannot be considered a preparatory act leading to the subsequent decision that will detain the applicant inside the RIC. As such, Article 5(4) of ECHR establishes the right to contest this decision by lodging objections against it with the competent court, despite the lack of a clear provision of remedy against this type of decision under Greek law.

Merits: The court considers that:

- In view of the need to transfer the applicant to the Orestiada RIC, he was lawfully detained with this aim, according to the provisions of Articles 9(1) and 14(1) of L/4375/2016.
- The applicant's claims that return to his country of origin is not possible and that the risk of absconding is not high are unfounded, since they do not constitute the grounds of the contested decision.
- The applicant's claim that measures alternative to detention were not considered is unfounded, as there is no possibility to apply alternative measures, since he cannot provide a known address.
- The applicant's claim that the conditions of detention are inhumane is dismissed as unproven, bearing in mind that he is being detained in the Xanthi Pre-removal Centre, which offers medical care, outdoors space and is not only designated for short detention periods.
- However, the Court reiterates that **any delays in transfers that are not the fault of the detainee should not be considered a lawful basis for prolonging detention, and definitely not for a period that exceeds reasonable time limits.**
- The Court also takes into account the exceptional situation of the large numbers of arrivals in Greece, and the fact that the decision to detain is temporary and not for the purpose of deportation.

Outcome: Rejects objections and upholds detention. The court also establishes a five-day deadline for the authorities to transfer the applicant. If he is not transferred by this deadline, the detention will be lifted.

Kavala Administrative Court of First Instance

– Decision no. 73/2018

Detention of a person acquiring asylum seeker status

Merits: Third country nationals, who have been provisionally detained with a view to deportation, acquire the status of asylum seekers (art. 34 L. 4375/2016), when they express the will to lodge an application for international protection before the Detaining Authority (art. 36 L. 4375/2016). From that moment, the third-country national cannot be removed from the country (art. 37. L. 4375/2016), nor can they be detained in view of removal. The continuation of their – initially

provisional – detention is not entirely precluded, but has to be notified with a new decision of prolongation, following the relevant administrative procedure and an individualised examination on the specific criteria set out by Article 46, L. 4375/2016 (detention of asylum seekers). The court found that, since the wish to apply for asylum was clearly stated, the applicant had acquired the status of asylum seeker while being provisionally detained. As such, there should have been a new decision that would order the continuation of the applicant's provisional detention, in accordance with the procedure and the guarantees of Article 46. As no such decision was issued, detention has to be lifted.

Outcome: The court upholds the objections and orders the release of the applicant, under the restrictive measures of a) immediately presenting himself to the competent asylum office for full registration of his asylum request and b) appearing before the police department of his place of residence once a month, until the examination of his asylum request is completed.

“Protective custody” of children – pending case at the ECtHR

Sh. D. v. Greece:²⁴⁸ The applicants, five unaccompanied Afghan minors between 14 and 17 years old, arrived in Greece at the beginning of 2016. One of the applicants was placed in “protective custody” in a police cell in Polygyros and was later transferred to a reception centre for minors. The others were placed at the Idomeni camp near the border with FYROM. The first applicant complains that the conditions and lawfulness of his detention at Polygyros violate Articles 3 and 5 of the Convention. The other applicants allege that the living conditions in the Idomeni camp are contrary to Article 3 of the Convention.

248 Sh. D. and Others v. Greece, Appl. no. 14165/16, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-162153%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-162153%22]}).

C. HUNGARY

ECtHR judgment on detention in the transit zone

Ilias and Ahmed v. Hungary:²⁴⁹ The applicants, both Bangladeshi nationals, transited through Greece, “the former Yugoslav Republic of Macedonia” and Serbia, eventually arriving in Hungary on 15 September 2015. They immediately applied for asylum. For the next 23 days they stayed within the Röszke transit zone situated on the border between Hungary and Serbia; they could not leave for Hungary as the zone was surrounded by a fence and guarded. Following two sets of asylum proceedings, they were removed from Hungary. The removal decision referred to a Government decree, introduced in 2015, listing Serbia – the last country through which the applicants had transited – as a safe third country.

In its Chamber Judgment of 14 March 2017, the European Court of Human Rights held, unanimously, that there had been a violation of Article 5(1) and 5(4) (right to liberty and security) of the Convention, finding that the applicants’ confinement in the Röszke border zone had amounted to detention, meaning they had effectively been deprived of their liberty without any formal, reasoned decision and without appropriate judicial review. The Chamber further held, unanimously, that there had been no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention as concerned the conditions of the applicants’ detention in the transit zone, but that there had been a violation of Article 13 (right to an effective remedy) as concerned the lack of an effective remedy to complain about their conditions of detention.²⁵⁰

The Government’s request to refer the case to the Grand Chamber was granted and the hearing took place on 18 April 2018. The judgement is still awaited.

249 Ilias and Ahmed v. Hungary, Appl. No. 47287/15, 25.9.2015.

250 <http://www.statewatch.org/news/2017/mar/echr-hungary-removals-prel-Ahmed-v-%20Hungary.pdf>.

Domestic case law on placement in the transit zones

Despite the government’s denial that transit zones constitute deprivation of liberty, domestic courts on several occasions declared the placement in the transit zone of the applicants unlawful and ordered their release. Interestingly, the reasoning of the courts does not refer to the lack of necessary procedural safeguards while ordering detention (the lack of detention order, no individualisation, no assessment of necessity and proportionality, etc.). The courts instead refer to the Article 43(2) of the Procedures Directive and annul the placement in the transit if four weeks (max. time permitted for border procedures) has passed.

Sometimes the IAO does not respect the court’s decisions, which clearly instruct the authority to order the placement of the applicants in another facility, and instead maintains their placement in the transit zone. The following cases below exemplify such occasions:

10.K.27.051/2018/5.: The applicants received a decision on the Dublin transfer to Bulgaria. They appealed and (on 7 February 2018) the court quashed the decision on the Dublin transfer and stated that based on Articles 31(8) and 43(2) of the Procedures Directive the ruling on the placement is to be quashed as the decision on the applicants’ procedure was not issued within four weeks. Despite this judgment, the applicants remained detained in the transit zone, and were only released when granted subsidiary protection.

11.K.27.085/2018/9.: The family appealed against a decision on a Dublin transfer to Bulgaria, and also challenged the ruling on their placement in the transit zone, claiming that detention conditions were having a deteriorating effect on their children’s mental state, and that they needed a good doctor. The court quashed the decision on the Dublin transfer (on 23 February 2018). As to the placement in the transit zone, the court said that in line with Section 43(2) of the Procedures Directive, asylum seekers can be placed in the transit zone for up to four weeks, taking into account that the applicants applied for asylum with their children (the youngest is 4 years old). The court obliged IAO to designate a placement of stay for the new procedure which does not deprive them of their liberty and does not violate the requirement prohibiting inhuman and degrading treatment.

The court stated that IAO cannot designate the transit zone as placement for the applicants. Despite of the court's judgment and instruction, on 23 February 2018 the IAO issued a new ruling on the applicants' placement, designating the transit zone as a place of residence.

7.K.27.833/2017/22.: The applicants appealed their negative decision on asylum and challenged their placement in the transit zone. On 11 January 2018 the court issued its judgment which quashed the decision and the ruling on the placement and ordered the IAO to conduct a new procedure. As to the placement, the court claimed that it is not compatible with sections 43(2) and 31(9) of the Procedures Directive as a three-month period of time unreasonably exceeds four weeks, especially considering that there are four children in the family. The court obliged the IAO to designate a placement of stay for the new procedure which does not result in the deprivation of the applicants' liberty and does not violate the requirement prohibiting inhuman and degrading treatment. Despite of the court's judgment and instruction, on 11 January 2018, the IAO issued a new ruling on the applicants' placement designating the transit zone as a place of residence. Due to the IAO's ruling on the placement, the asylum seekers withdrew their applications.

Interim measures granted by the ECtHR concerning detention in the transit zones

The HHC continued to challenge the placement of especially vulnerable applicants in the transit zones before the ECtHR through requesting interim measures under Rule 39 of the Rules of Court.²⁵¹ The ECtHR ordered the Hungarian government to ensure that the applicants are placed in an environment that complies with Article 3 of the Convention or otherwise to transfer the applicants to an open reception centre. In most cases the IAO did not comply with these interim measures, and the applicants were only released from the transit zone after they were granted protection.²⁵² Some selected examples:

I.A. v. Hungary, appl. no. 38297/17: The applicant was an unaccompanied Afghan minor over the age of 14 when he applied

for asylum. He was therefore placed in the transit zone instead of a specialised childcare facility for unaccompanied, asylum-seeking children. On 1 June 2017, the ECtHR granted Rule 39 and indicated to the government to ensure that the applicant was placed in an environment that complies with Article 3 of the ECHR. He was only released from the transit zone on 14 July 2017, when he was finally granted subsidiary protection status, six weeks after the interim measure was granted.

M.H. and Others v. Hungary, appl. no. 38967/17: The applicants are an Iraqi family of six (father and mother and their four young children). The father is a survivor of torture; the mother was pregnant at the time of the application. She was diagnosed with several health problems that put her pregnancy at risk. She was taken to hospital several times, where no interpretation was provided. ECtHR granted an interim measure on 2 June 2017, ordering the government to ensure that the applicants were placed in an environment that complies with Article 3 of the ECHR. On 27 August, the IAO granted subsidiary protection to the entire family and they were released from the transit zone, twelve weeks after the interim measure was granted.

H.A. and Others v. Hungary, appl. no. 39498/18: The applicants are a family of six from Iraq: the mother, the father, and their four young children. Their oldest child, who is ten, is unable to use her limbs and is confined to a wheelchair. She is completely dependent on her parents in all aspects of everyday life, especially because none of the premises of the transit zone are accessible to wheelchair users. The young girl is not receiving medical treatment in the transit zone, and her condition is clearly deteriorating steadily. On 22 August 2018, the ECtHR granted an interim measure ordering the government to ensure that the family is placed in an environment which complies with the requirements of Article 3. The same day the IAO delivered an inadmissibility decision to the family, which the family appealed. The court suspended the judicial procedure based on the preliminary ruling procedure initiated in another case at the Court of Justice of the European Union.²⁵³ This means in practice that the family remains in detention in the transit zone indefinitely. The IAO finally placed small wooden ramp that make it easier to access the metal containers with a wheelchair. At the time of writing the applicants are still held in the transit zone.

251 At the time of writing, the ECtHR has granted 17 interim measures under Rule 39 regarding placement in the transit zones.

252 Hungary: the Immigration and Asylum Office Ignores Domestic Court Decisions and Interim Measures of the European Court of Human Rights Information update by the Hungarian Helsinki Committee (HHC), 14 December 2018 <https://www.helsinki.hu/wp-content/uploads/transit-placement-infobonbon.pdf>.

253 C-564/18.

D. ITALY

ECtHR judgment on detention on boats

Khlaifia and Others v. Italy²⁵⁴

Facts: The facts that gave rise to the legal case are linked to the wave of landings of irregular migrants that occurred in 2011 as a result of the serious political unrest that then characterized many North African countries (known as the “Arab Spring”). Consequently, many migrants tried to reach the coasts of Europe by any means. The case deals in particular with the circumstances surrounding three Tunisian citizens and their treatment in Italy while detained on the island of Lampedusa, and with their subsequent repatriation to their country of origin. They were first placed at the Centre for Rescue and First Reception in Lampedusa, (former CPSA) in conditions which they defined as “inhumane and degrading”. In reaction to these conditions of stay, arson and riots broke up in the centre and seriously damaged the facility. The event forced the Italian authorities to find a different location for more than a thousand migrants present on the island. They were taken to Palermo and boarded on three ships, which had been docked for several days at the port of Palermo. From Palermo airport, the migrants were finally repatriated to Tunisia after a superficial verification of their identity before the Tunisian consul in application of the Italian-Tunisian agreement of 5 April 2011.

Judgement: *The Grand Chamber found the following violations:*

- The deprivation of the applicants’ liberty, in the absence of a clear and accessible legal basis, does not satisfy the general principle of legal certainty and does not protect the individual from arbitrary decisions. The removal orders issued by the Italian authorities did not contain any reference to applicants’ deprivation of liberty or to their legal and factual rationale. In addition, the measures were not forwarded to them “as soon as possible” (violations of Articles 5(1) and 5(2))
- The Italian legal system did not provide the persons concerned with any remedy through which they could obtain a judicial decision on the legality of their deprivation of liberty (violation of Article 5(4))

- The Government has not indicated any means of appeal enabling the applicants to denounce the conditions of reception in the CPSA or aboard the Vincent and Audacia vessels. An appeal before the Justice of the Peace against the refoulement orders would have been useful only to challenge the legality of their repatriation. Moreover, these decrees were adopted only at the end of the detention of the persons concerned (violation of Article 13 in conjunction with Article 3)

In September 2017, Italy presented to the Committee of Ministers of the Council of Europe a plan for the implementation of the judgment, taking into account the general measures that it had taken to prevent the reoccurrence of the detected violations. By a decision of 15 March 2018, the Committee of Ministers declared the information provided by the Government insufficient, and requested further clarification concerning the regulatory framework for first aid and assistance centres (now hotspots), the average stay of people within these facilities, the practices related to the freedom of movement of identified persons, and the measures taken to prevent situations of arbitrary deprivation of liberty.²⁵⁵

Unaccompanied minors in the hotspot of Taranto – pending case at the ECtHR

Alagie Trawalli and Others v. Italy²⁵⁶

Facts: 13 unaccompanied minors were detained in the hotspot of Taranto in July 2017. They were placed in a single tent together with adults, closed within a metal-mesh perimeter fence controlled by the Italian Army. They were not allowed to communicate with the outside world and received minimum information on their rights related to their status as minors. Moreover, the claimants have declared that they did not receive any information on the possibility to ask for international protection nor of its consequences.²⁵⁷ For these reasons, the lawyers belonging to ASGI (Association of Legal Studies on Immigration) submitted an application to the ECtHR.

Alleged human rights violations: Article 3 (prohibition of torture and inhuman and degrading treatment) regarding conditions in the hotspot, Article 5 (right to liberty and security), Article 8 (right to

254 Khlaifia and Others v. Italy, Appl. no. 16483/12, 15 December 2016, GC.
255 Source: National Guarantor for the Rights of persons detained or deprived of their Liberty, Report to the Parliament, June 2018, p.235.
256 Alagie Trawalli and Others v. Italy, Appl. no. 47287/17, [https://hudoc.echr.coe.int/eng#{„itemid“:\[„001-180670“\]}](https://hudoc.echr.coe.int/eng#{„itemid“:[„001-180670“]}).
257 ASGI, La Corte Europea per i diritti dell’uomo dichiara ammissibile il ricorso contro il trattenimento dei minori stranieri all’interno del cd. hotspot di Taranto, https://www.asgi.it/wp-content/uploads/2018/02/2018_Nota_hotspot-CEDU.pdf.

respect for private and family life), and Article 13 (right to an effective remedy) of the ECHR. In particular, the right to liberty appears to have been violated because all unaccompanied minors were detained without a written order, without the opportunity to challenge their detention and in the aggravating circumstance of not being able to communicate with the outside world. Moreover, the living conditions for children were precarious, especially considering the overcrowding

tent and the forced cohabitation with adults. In addition, alleged human rights violations also concern law n. 47/17, which establishes certain forms of reception to protect children's free growth. This law prohibits the detention of minors in hotspots, and it is also hard to understand why guardians have not been appointed in order to receive adequate health, psychological and social support.²⁵⁸

258 See <https://www.liberties.eu/it/news/hotspot-taranto-minori-come-in-carcere/14492>.

VII. CONCLUSIONS AND RECOMMENDATIONS

The increased use of detention measures for asylum seekers upon entry is motivated by a range of different practical, political, and legal considerations. It has been used as a general response to cope with the unprecedented pressure on the reception and asylum processing systems in all of the countries studied (including as a response to the lack of open reception accommodation facilities in Bulgaria and Greece). Detention has also been promoted as a security measure (e.g. against terrorism) and as a means to prevent asylum seekers from crossing external borders in a bid to gain political support for the ruling government (in Bulgaria, Hungary and Italy). Finally, as in the case of Greece and Italy, the increased rate of detention of asylum seekers at the border has also been the product of political action at the EU level – namely the need to enforce the terms of the EU-Turkey statement – as well as pressure exerted by the European Commission to ensure the on-going operation of the Dublin system.

No clear evidence confirms that detention as a response to an increased migratory influx actually reduces the flow of arrivals.²⁵⁹ It might initially deter migrants from crossing certain border points (e.g. Evros border with Turkey), but as pointed out by the Council of Europe's Parliamentary Assembly, such policies only shifted the burden onto other entry points (e.g. the Greek islands). Besides, in 2018 arrivals through the Evros border increased drastically. Decreases in arrivals can also be due to other factors, such as for example the cooperation between Italy and Libya. Or in Hungary, for example, where the significant drop in the total number of asylum applications in the past two years is largely a result of the arbitrary quota on daily entrants to the two land-border transit zones enforced by the asylum authority (five persons per zone per day since 23 January 2017, and only an average of one person per day per zone on weekdays since 23 January 2018) and not through the use of detention.²⁶⁰ At the time of writing, there are still thousands of people waiting in Serbia for their turn to enter the Hungarian transit zones

and apply for asylum there, despite being well aware that this means detention for the whole duration of their asylum procedure.

Despite a significant decrease in asylum applications in Bulgaria and Hungary, detention is still increasingly used, and what is more, the length of detention has also increased. This is even more worrying, as the CPT found conditions in Bulgarian immigration detention centres generally poor, and after its visit to the Hungarian transit zones, the CPT reported that they are not suitable for holding people for a long period.

While it is true that the automatic detention of all asylum seekers for the whole duration of their asylum procedure, as implemented in Hungary, reduces asylum seeker's secondary movement across the EU, the flagrant infringement of their right to liberty cannot be balanced against the policy objective of halting such movements. Besides, as noted by the Hungarian Helsinki Committee, the traumatic experience of being detained in the transit zones contributes to the fact that more beneficiaries of international protection leave the country within a few days of their release from the transit zone than before.²⁶¹ And many of them, despite already having been granted international protection in Hungary, apply for asylum again in another EU country. As such, the use of *de facto* detention can be understood as counter-productive to refugee integration, and to contribute to an increase in the secondary movement of beneficiaries of international protection towards Western Europe. As an ECRE policy note finds: *"The damage caused by detention adds to an already heavy process of adjustment and takes significant time and effort to remedy. Emerging evidence indicates that the "refugee gap" – the lower integration outcomes for beneficiaries of international protection compared to other third-country nationals – can best be tackled by creating similar conditions for refugees as for other migrants, including access to networks, access to the labour market, opportunities to learn the language through daily interactions and so on. Detention militates against this approach by isolating people from communities and wider society."*²⁶²

259 See for example the following research: Heaven Crawley, Jessica Hagen-Zanker, Deciding Where to go: Policies, People and Perceptions Shaping Destination Preferences, 10 December 2018, <https://onlinelibrary.wiley.com/doi/full/10.1111/imig.12537>.

260 AIDA report on Hungary, p. 17.

261 AIDA report on Hungary, p. 106.

262 ECRE, Taking liberties: detention and asylum law reform, <https://www.ecre.org/wp-content/uploads/2018/09/Policy-Note-14.pdf>, p.4.

This research revealed that the form of detention used upon entry is often different from the official form of detention that goes hand in hand with necessary procedural standards. The form that is often used is *de facto* detention, lacking all necessary safeguards and depriving individuals of the right to effective judicial remedy against detention. Certain governments go so far as to not even recognise these forms of detention as deprivation of liberty, which clearly goes against international law, as was stated by the UNWGAD after the historically unprecedented suspension of their visit to Hungary:



There can be no doubt that holding migrants in these “transit zones” constitutes deprivation of liberty in accordance with international law.”

Elina Steinerte and Sètondji Roland Adjovi
members of the UN Working Group on Arbitrary Detention

In certain cases, structural difficulties put an end to *de facto* detention practices, since systems could no longer cope with related challenges. For example, conditions in the hotspots on the Greek islands and in Italy became so precarious that most hotspots ceased to operate as closed centres. However, in Greece *de facto* detention still occurs in the Evros region, and the geographical restriction that was introduced instead on the islands can arguably amount to deprivation of liberty as well.

Italy has recently adopted a new law that regularises *de facto* detention for asylum seekers at the hotspots. Its implementation in practice is yet to be observed. Bulgaria also enacted legislative amendments to remedy *de facto* detention practices. It introduced a new legal regime of “short term detention” to regularise the practice of *de facto* detaining irregular migrants in the so-called “Distribution Centre” in Elhovo. While it is definitely to be welcomed that the practice of *de facto* detention is being abolished, research shows that the compatibility of this form of detention – believed to be employed purely for administrative convenience – with international law is at least questionable. The terminology used is also telling, as despite being an officially recognised form of detention in law, it is not called detention but “short-term

accommodation” and immigrant detention centres in Bulgaria are officially called “Special Homes for Temporary Accommodation of Foreigners”.

Widespread criticism from international and national organisations and bodies definitely contributed to these developments. On the other hand, harsh criticism did not bring any change to unlawful *de facto* detention practices in Hungary’s transit zones.

Litigation has successfully contributed to tackling problematic forms of detention upon arrival. In Bulgaria, the breakthrough came in January 2018, when the Supreme Court ruled that the submission of an international protection claim is a statutory fact that puts an end to immigration detention. Some milestone ECtHR judgments support systemic changes in the long run. Litigation, however, proved to be insufficient to balance out the strong political will to limit asylum seekers’ right to liberty in certain countries. The re-imposed geographical restriction on the Greek islands just after its judicial annulment, the non-respect of domestic court decisions or ECtHR interim measures in Hungary and *de facto* detention in Diciotti case in Italy, despite the Khlaifia judgment finding confinement on the boat unlawful detention, exemplify this challenge.

Despite the recast Reception Conditions Directive laying out extensive grounds for introducing a specific detention regime for asylum seekers – the so-called “asylum detention”²⁶³ – certain countries which are the focus of this research deemed it necessary to resort to *de facto* detention instead, depriving certain asylum seekers of all detention-related human rights safeguards. Or, as the example of Hungary shows, almost entirely abandoning the use of “asylum detention”, and instead *de facto* detaining almost every asylum seeker who enters the country. While in Bulgaria, the introduction of “asylum detention” under the Reception Conditions Directive did not lead to discontinuation of the controversial practice of detaining asylum seekers as removable irregular migrants prior to giving them access to the asylum procedure.

Why do Member States prefer to use *de facto* detention despite the existence of a dedicated legal framework? Is it for the purpose of administrative convenience? In order to avoid procedural safeguards?

263 Article 8 of the Reception Conditions Directive.

In order to satisfy public appeal and communication needs? In light of international human rights law, none of these motives can be accepted as a legitimate ground for the infringement of asylum seekers' right to liberty.

The right to liberty – the ability to live without being put in a prison – is one of the most fundamental rights that every human being should be able to enjoy. The right that is as old as the *Magna Carta Libertatum* of 1215. This research confirmed that this basic human right is losing ground in the context of migration. *De facto* detention is used in a variety of settings, labelled as hotspots, or pre-removal centres, during pushbacks, in land-border transit zones and at the airport, on boats and at police stations. Asylum seekers are often completely deprived of the most ancient and basic common law remedy, *habeas corpus*, in these situations. It is particularly striking when the reasons for breaching someone's basic human right to liberty are (or were) delays in transfer to other reception facilities (Italy and Greece) or the lack of reception centres for children (Greece). Capacity shortage in appropriate open

accommodation facilities led authorities to the conclusion that it is better to arbitrarily detain human beings than to ensure their right to liberty – a policy that has no place in a democratic society.

The aim of this report is not to advocate for the complete abolishment of detention in the migratory context. Instead what we believe should be abolished is *de facto* detention, which lacks the basic guarantees that the right to liberty endows every human being with. As the ECtHR's *Khlaifia* judgement confirms, the need to defend state borders in case of a massive arrival of migrants cannot count as justification for *de facto* detention in breach of Article 5 of the European Convention on Human Rights. When resorting to the detention of irregular migrants and/or asylum seekers, states should observe all their human rights obligations, which go beyond the simple issuance of a detention order, and include, among other safeguards, the mandatory consideration of less coercive alternatives.

RECOMMENDATIONS

The authors of this report would like to endorse the recommendations advanced in the ECRE study on Asylum and *de facto* detention in Europe – *Boundaries of Liberty*.²⁶⁴

1. Where European countries prevent asylum seekers from leaving the transit zones or other border facilities to access other parts of their territory, European countries should legally qualify those measures as deprivation of liberty.
2. The Council and European Parliament should clarify in the reform of the recast Reception Conditions Directive that stay in a transit zone or a border facility amounts to deprivation of liberty where the applicant is not allowed to freely enter and exit the facility into the territory.
3. Where European countries resort to restrictions on freedom of movement or deprivation of liberty, in accordance with domestic law and human rights law requirements, they should inter alia: (a) conduct an individualised assessment of each case to establish necessity

and proportionality; (b) consider the application of alternatives to detention; (c) communicate a duly motivated detention decision to the individual concerned; (d) specify the modalities of effective remedy before a court; (e) eliminate restrictions imposed upon access of legal representatives, UNHCR, UNWGA and specialised civil society organisations.

The authors of this report also

4. Oppose the introduction of a mandatory border procedure under Article 22 of the recast Return Directive, as it exacerbates the systematic use of detention at the border, contrary to international and EU human rights law standards.²⁶⁵

And finally

5. The notion of "controlled centres" put forward by the Commission and some Member States remains ambiguous and untested in practice, and risks increasing situations of *de facto* detention at the border. The concept should therefore be opposed.²⁶⁶

264 ECRE, *Boundaries of liberty: Asylum and de facto detention in Europe*, 2017, <http://www.asylumineurope.org/sites/default/files/shadow-reports/boundariesliberty.pdf>.

265 See also ECRE Comments on the Commission proposal for a recast Return Directive COM(2018) 634, pp. 22-26, <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-Commission-Proposal-Return-Directive.pdf>.

266 See also ECRE Comments on the Commission proposal for a Regulation on the European border and coast guard (COM(2018) 631 FINAL), pp. 8, 9, <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-EBCG-proposal.pdf>.

ANNEX I

OBSERVATIONS FROM UN TREATY BODIES

A. BULGARIA

1. CCPR, Concluding observations on the fourth periodic report of Bulgaria, 15 November 2018²⁶⁷

“30. The State party should: (d)

Avoid placing asylum seekers in detention except as a last resort and for the shortest period possible, establish a mechanism for the identification of vulnerable applicants, provide effective alternatives to detention and reduce the length and practice of detaining migrants. The State party should ensure that any detention is justified as reasonable, necessary and proportionate in the light of the individual’s circumstances, that it is subject to periodic judicial review, and that asylum seekers and migrants have access to qualified legal aid when the interests of justice so require;”

2. CAT, Concluding observations on the sixth periodic report of Bulgaria, 27 November 2017²⁶⁸

“The State party should: (a) *Ensure that persons in need of international protection are not subjected to arbitrary detention, provide for judicial review of detention, envisage alternatives to detention and prohibit the detention of children; (i) Reduce the level of overcrowding in migrant detention facilities, in particular in Busmantsi and Lyubimets.*”

3. CERD, “Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria,” 31 May 2017²⁶⁹

“22. The Committee recommends that the State party take a human-rights based approach and integrate a non-discrimination perspective into its migration governance. Recalling its general

recommendations No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention and No. 30 (2004) on discrimination against non-citizens, the Committee urges the State party to: (a) Refrain from engaging in pushbacks and refoulement, conduct individual assessments, ensure the availability of adequate procedural safeguards, *investigate effectively any excessive use of force by law enforcement officials in the context of migration at the border or in detention facilities and bring perpetrators to justice by sanctioning them adequately;* (e) *Stop the practice of placing undocumented asylum seekers in mandatory detention, consider developing alternatives to detention while ensuring that detainees enjoy due process and fair trial guarantees, continue improving the capacity and material conditions of reception centres, and ensure that all asylum seekers have access to basic services, including health care, psychological assistance and education;*

4. CRC, “Concluding observations on the combined third to fifth periodic reports of Bulgaria,” 21 November 2016²⁷⁰

“51. In the light of general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party: (a) Ensure that sufficient provisions are made to prevent unaccompanied asylum-seeking children from being placed in rooms with unrelated adults; [...] (c) *Avoid any form of detention of asylum seekers under the age of 18 years and families with children, and consider all possible alternatives, including unconditional release, prior to detention.* To that end, the Committee draws the State party’s attention to UNHCR’s Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers of 26 February 1999;”

267 https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/BGR/CO/4&Lang=En.

268 <http://www.refworld.org/docid/5a291a654.html>.

269 <http://uhri.ohchr.org/document/index/74F920BB-D5F5-4A6C-A20F-232F9C0285ED>.

270 <http://uhri.ohchr.org/document/index/23D33C16-3692-45DA-8C14-ED8C-933CB728>.

B. GREECE

1. CERD, Concluding observations on the twentieth to twenty-second periodic reports of Greece, 3 October 2016²⁷¹

“22. The Committee is aware that the recent migrant crisis has put a heavy burden on the State party. The Committee welcomes the many steps taken in that regard, including the reforms undertaken in the asylum system and the opening of several new regional asylum offices and extending the coverage of basic health care to vulnerable undocumented migrants. *The Committee however remains*

concerned about: (a) The detention of undocumented migrants entering the State party, including families and children, for periods exceeding the maximum legal period of administrative detention combined with lack of due process guarantees while in detention;

23. The Committee calls on the State party to increase its efforts to implement the specific rights of persons fleeing armed conflict or persecution who arrive on its shores. The Committee also calls on the State party to ensure the respect of the rights of migrants arriving in the same migratory flows as refugees and asylum seekers. Such efforts could also be stepped up through strengthened international cooperation, in particular by European Union countries. The Committee further urges the State party to: (a) *Eliminate the automatic detention of migrants arriving on the islands after the conclusion of the statement by the European Union and Turkey on migration, introduce alternatives to detention, ensure that those deprived of their liberty enjoy due process and take measures to convert the reception and identifications centres on the islands into open centres;*”

2. CCPR, Concluding observations on the second periodic report of Greece, 3 December 2015²⁷²

“28. *The State party should ensure that detention of all irregular migrants is reasonably necessary and proportionate and for the shortest possible period of time, and that alternatives to detention are available in law and implemented in practice. In particular, the State party must ensure that any decision to detain asylum seekers and refugees is based on their individual circumstances and takes into account less invasive means of achieving the same end. The State party should also strengthen its efforts to ensure, in cooperation with*

its regional and international partners, decent living conditions in all reception and detention centres for migrants and asylum seekers, by providing adequate health-care services, food, sanitary conditions and access to transportation. It should also ensure that conditions in the new reception “hot spots” are adequate.

32. The State party should ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children, including by: a) *Ensuring that unaccompanied minors who enter the country in an irregular manner are not detained or are held in detention only as a measure of last resort and for the shortest period of time necessary;*”

3. CRC, Concluding observations: Greece, 13 August 2012²⁷³

“64. While noting the efforts made by the State party since the consideration of the previous report in 2002, regarding the increase of reception facilities for unaccompanied and/or separated children, as well as the new Law No. 3928/2011 on the establishment of new initial reception centres, which is supposed to be fully operational in autumn 2012 and will provide screening and accommodation for migrant and unaccompanied children, the Committee reiterates its previous concern at the substandard conditions of reception of unaccompanied and/or separated children. 65. *The Committee recommends that the State party: (a) Ensure that children, either separated or together with their families, who enter the country in an irregular manner, are not detained, or remain in detention only in very exceptional circumstances and for the shortest period of time necessary;*”

4. CAT, Concluding observations of the Committee against Torture, 17 June 2012²⁷⁴

“20. *The State party should ensure that administrative detention on the grounds of irregular entry is not applied to asylum seekers. In particular, detention of asylum seekers should be used only in exceptional circumstances or as a measure of last resort, on grounds specifically prescribed by law, and then only for the shortest possible time. To this end, alternatives to detention should be duly examined and exhausted, especially with regard to vulnerable groups.*

22. *The State party should strengthen its efforts to provide adequate protection and proper care in respect of unaccompanied or separated minors entering the country, including by promptly amending its legislation to prohibit their detention.*”

271 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fP-PRiCAqhKb7yhshHeRijq81EP%2b%-2blb%2feJijfh9PY4o9q26ynMbExl-jkMfzovcSZVcL%2fEgGtpIBg1kPsg-3trvptYYFRml4J7LAItgFEcRO2US-p%2b%2b4Cn1YRiR6jfv90tr1dp3EQ-jONbU7R5A%3d%3d>.

272 <http://uhri.ohchr.org/document/index/7B703844-1529-4B0D-A4A2-7B90F-D7A8C47>.

273 <http://uhri.ohchr.org/document/index/8795F524-C610-455C-9EF0-50AF-7CB6732A>.

274 <http://uhri.ohchr.org/document/index/906EEA34-1BE6-4364-8FFE-87FEF-69B74F2>.

C. HUNGARY

1. CCPR, Concluding observations on the sixth periodic report of Hungary, 9 May 2018²⁷⁵

“45. The Committee is concerned about the negative impact of the major legislative reforms on migration adopted by the State party over the past few years. While noting the State party’s position that, as a sovereign State, it is entitled to curb illegal migration to its territory, the Committee is concerned that the law adopted in March 2017, which allows for the automatic removal to transit areas of all asylum applicants for the duration of their asylum process, except unaccompanied children identified as being below the age of 14 years, does not meet the legal standards under the Covenant, owing to: (a) the lengthy and indefinite period of confinement allowed; (b) the absence of any legal requirement to promptly examine the specific conditions of each affected individual; and (c) the lack of procedural safeguards to meaningfully challenge removal to a transit area. The Committee is particularly concerned about reports of the extensive use of automatic immigration detention in holding facilities inside Hungary and about claims that restrictions on personal liberty have been used as a general deterrent against unlawful entry rather than in response to an individualized determination of risk. In addition, the Committee is concerned about allegations of poor conditions in some holding facilities (arts. 2, 7, 9, 10, 13 and 24).

46. The State party should bring its legislation and practices relating to the treatment of migrants and asylum seekers into compliance with the Covenant, taking into account, inter alia, the Committee’s general comment No. 35 (2014) on liberty and security of person. It should also: (a) *Refrain from automatically removing all asylum applicants to the transit areas, thereby restricting their liberty, and conduct individual assessments of the need to transfer them, on a case-by-case basis;* (b) *Significantly reduce the period of initial mandatory immigration detention, ensure that any detention beyond that initial period is justified as reasonable, necessary and proportionate in the light of the individual’s circumstances and provide that it is subject to periodic judicial review;* (c) *Expand the use of alternatives to detention for asylum seekers;* (d) *Legally limit the overall duration of immigration detention;* (e) *Provide for a meaningful right to appeal against detention and other restrictions on movement;* (f) *Ensure that children and unaccompanied minors are not detained, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests, as a primary consideration, with regard to the duration and conditions of detention and their special need for care;* (g) *Improve the conditions in the transit areas and ensure that migrants are held in appropriate, sanitary, non-punitive facilities and that immigration detention does not take place in prisons.”*

275 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2f-PPRiCAqhKb7yhsnm97%2bRfSonZ-vQyDICMC7to7lklHVwiffCrjxVJVYr7AY-Gd1bD3LqpWwx7fjwdowp0XO09j1Ke-Hx2S0%2be4%2fGUZf4WEtz0X6rs-DTNt6FAcrQ>.

D. ITALY

1. CERD, Concluding observations on the combined nineteenth and twentieth periodic reports of Italy, 17 February 2017²⁷⁶

19. The Committee welcomes the adoption of Law No. 67/2014 in April 2014 to abolish the criminal offence of irregular entry or stay in the territory of the State party, although it remains concerned that irregular migrants re-entering the country following an expulsion will continue to face criminal sanctions. The Committee also expresses concern at the “hotspot” approach adopted by the State party, pursuant to the recommendation of the European Commission in May 2015, which has been designed to provide locations in which irregularly arriving migrants and asylum seekers can quickly be identified and transferred for the purposes of the processing of asylum applications, relocation in another European Union member State, or return to their countries of origin. *Some of the Committee’s concerns regarding the hotspot approach include: (a) The lack of a legal basis for the establishment of the hotspots and the de facto detention of migrants and asylum seekers beyond the legally permissible 48-hour period;*

20. The Committee recommends that the State party: (a) *Consider introducing a presumption against immigration detention in law and ensure that immigration detention is only applied as a measure of last resort, after it has been determined, on a case by case basis, to be strictly necessary, proportionate, lawful and non-arbitrary, and is imposed for the shortest period of time;*”

2. CCPR, Concluding observations on the sixth periodic report of Italy, 1 May 2017²⁷⁷

“24. While appreciating the great efforts made by the State party to receive and host exceptional numbers of persons fleeing armed conflict or persecution, the Committee is concerned at: (c) *The prolonged detention at hotspots beyond the legally prescribed period of 72 hours;*

25. The State party should: (c) *Ensure that immigration detention is only applied for the shortest period possible and as a measure of last resort, after it has been determined, on a case-by-case basis, to be strictly necessary, proportionate, lawful and non-arbitrary;*”

276 <https://uhri.ohchr.org/Document/File/3d47fc4c-243c-4f73-b684-9dab-d40ea900/a4b7fa52-6e94-45de-988a-be51b6419dcf>.

277 <https://uhri.ohchr.org/Document/File/f1060a1e-584f-4d16-ac75-e24851e5c500/373efd6a-b0f1-4bd7-a065-7c6157708753>.

ANNEX II

GLOBAL IMMIGRATION DETENTION OBSERVATORY DATA PROFILES

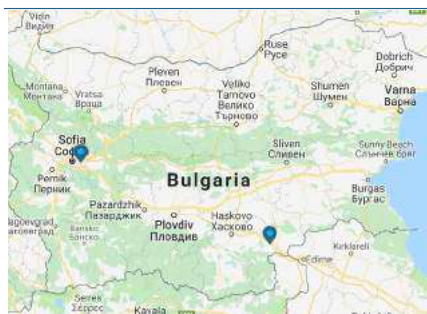
Bulgaria Immigration Detention Data Profile

Global Detention Project profile produced in partnership with Red Line Project and Bulgarian Foundation for Access to Rights (FAR)

THE RED LINE PROJECT
A project led by the Hungarian Helsinki Committee and funded by ERM

GLOBAL IMMIGRATION DETENTION OBSERVATORY

GLOBAL DETENTION PROJECT



Quick Facts	
Immigration detainees (2017)	2,989
Detained asylum seekers (2017)	37
Detained minors (2017)	736
Immigration detention capacity (2017)	700
Persons expelled (2017)	1,755
International migrants (2017)	153,800
New asylum applications (2017)	3,700

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/bulgaria>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.

STATISTICS				
Detention, expulsion, and incarceration statistics				
	Observation Date		Observation Date	
Total number of immigration detainees by year	2,989	2017	Top nationalities of detainees	Afghanistan, Syria, Iraq
	3,332	2017		
	18,391	2016		
	11,314	2016		
	27,724	2015		
	11,902	2015		
Number of persons granted alternatives to immigration detention	14	2017	Number of detained asylum seekers	37
Total number of detained minors	736	2017	Number of detained unaccompanied minors	Not Available
Number of detained accompanied minors	736	2017	Number of detained stateless persons	3
Number of apprehensions of non-citizens	2,595	2017	Immigration detainees as a percentage of total international migrant population	8.71
	14,125	2016		9.33
	20,810	2015		

Estimated total immigration detention capacity	700	2017	Number of dedicated long-term immigration detention centres	2	2017
				3	2015
Estimated capacity of dedicated long-term immigration detention centres	700	2017	Number of dedicated medium-term immigration detention centres	2	2017
	1,040	2016			
	940	2015			
Number of persons removed/returned (voluntary returns and deportations)	1,755	2017	Number of deportations/forced returns only	485	2017
	735	2015		345	2016
				555	2015
				665	2014
Percentage of persons removed in relation to total number of people placed in removal procedures	68	2017	Criminal prison population	7,345	2016
	9	2016		9,028	2014
	4	2015			
Percentage of foreign prisoners	2.93	2016	Prison population rate (per 100,000 of national population)	103	2016
				125	2014

Demographics and immigration-related statistics				
	Observation Date			Observation Date
Population	7,100,000	2017	International migrants	153,800
	7,150,000	2015		102,100
International migrants as a percentage of the population	2.2	2017	Estimated number of undocumented migrants	2,595
	1.4	2015		
Refugees	804	2017	Total number of new asylum applications	3,700
	17,774	2016		19,265
	16,557	2015		
Stateless persons	73	2017		
	67	2016		
	67	2015		

DOMESTIC LAW				
Laws and regulations				
Constitutional guarantees?	Name	Constitution and Articles	Year Adopted	Last Year Amended
Yes		Constitution of the Republic of Bulgaria, Article 30.	1991	1991
Yes		Constitution of the Republic of Bulgaria, Article 30.	1991	2015
Core pieces of national legislation	Name		Year Adopted	Last Year Amended
	Foreigners in the Republic of Bulgaria (LFRB) Act. No. 153/23.12.1998. Last Amendment, SG No. 53/27.06.2014		1998	2014
	Law on Foreign Nationals in the Republic of Bulgaria, Last Amendment SG. No. 56 of 6 July 2018		1998	2018
	Law on Asylum and Refugees (Закон за убежището и бежанците)		2002	2016

Additional legislation	Name	Year Adopted	Last Year Amended	
	Administrative Procedure Code (APC)	2006	2014	
	Law on Legal Aid	2006	2017	
	Law on Legal Aid	2005	2018	
	Criminal Code	1968	2017	
Regulations, standards, guidelines	Name		Year Published	
	Regulation for the Application of the Law on the Foreigners in the Republic of Bulgaria [2011] State Gazette 51 of 05.07.2011, last amended State Gazette 57 of 28.07.2015		2011	
	Regulation on the Application of the Law on Foreign Nationals in the Republic of Bulgaria		2011	
	Ordinance No. 13-1201 of 1 June 2010 on the Procedure for the Temporary Accommodation of Foreigners in the Special Homes for the Temporary Accommodation of Foreigners and Their Units		2010	
Length of detention				
Maximum length for administrative immigration detention in law.	Number of Days		Observation Date	
	540		2019	
Immigration-status-related grounds	Name		Observation Date	
	Detention to establish/verify identity and nationality		2019	
	Detention to effect removal		2019	
	Detention to prevent absconding		2019	
	Detention to establish/verify identity and nationality		2019	
	Detention to effect removal		2019	
	Detention for failing to respect non-custodial measures		2019	
Non-immigration-status-related grounds providing for administrative detention in immigration legislation.	Name		Observation Date	
	Detention on public order, threats or security grounds		2019	
Criminalization of immigration-related offences				
Does the country provide specific criminal penalties for immigration-related violations?	Fines	Incarceration	Observation Date	
	Yes	Yes	2019	
Grounds for criminal immigration-related detention/incarceration and maximum potential duration of incarceration	Grounds for Incarceration	Maximum Number of Days of Incarceration		Observation Date
	Unauthorized re-entry	2190		2019
	Unauthorized entry	1825		2019
	Unauthorized exit	1825		2019
Has the country decriminalized immigration-related violations?	Has the country decriminalized immigration-related violations?			Observation Date
	Yes			2019
Length of detention				
Maximum length for administrative immigration detention in law.	Number of Days		Observation Date	
	540		2019	

Maximum length of time in custody prior to issuance of a detention order	Number of Days	Observation Date		
	1	2019		
Average length of detention	Number of Days	Observation Date		
	25	2017		
Maximum length of detention for asylum-seekers	Number of Days	Observation Date		
	No Limit	2019		
Procedural standards				
Provision of basic procedural standards	Name	In Law	In Practice	Observation Date
	Right to legal counsel	Yes	Yes	2019
	Information to detainees	Yes	No	2019
	Access to free interpretation services	Yes	infrequently	2019
	Access to consular assistance	Yes	Yes	2019
	Access to asylum procedures	Yes	infrequently	2019
	Independent review of detention	Yes	infrequently	2019
	Right to appeal the lawfulness of detention	Yes	infrequently	2019
	Complaints mechanism regarding detention conditions	Yes	No	2019
	Compensation for unlawful detention	Yes	No	2019
non-custodial measures (alternatives to detention)				
Types of non-custodial measures	Name	In Law	In Practice	Observation Date
	Registration (deposit of documents)	Yes	infrequently	2018
	Release on bail	Yes	No	2018
	Provision of a guarantor	Yes	Yes	2018
Vulnerable persons				
Is the detention of vulnerable persons provided in law? Are they detained in practice?	Name	In Law	In Practice	Observation Date
	Stateless persons	Not mentioned	Yes	2019
	Women	Not mentioned	Yes	2019
	Accompanied minors	Provided	Yes	2019
	Asylum seekers	Provided	Yes	2019
	Elderly	Provided	Yes	2019
	Pregnant women	Provided	Yes	2019
	Persons with disabilities	Provided	Yes	2019
	Refugees	Not mentioned	Yes	2019
	Survivors of torture	Provided	Yes	2019
	Unaccompanied minors	Prohibited	Yes	2019
	Victims of trafficking	Provided	Yes	2019
Mandatory detention				
Mandatory detention	Filter	Name	Observation Date	
	No		2017	

Expedited removal and re-entry ban		
Expedited/fast track removal	Name	Observation Date
	Yes	2019
Re-entry ban	Name	Observation Date
	Yes	2013
INTERNATIONAL LAW		
Relevant international treaties and date of ratification		
International treaties	Name	Ratification Year
	ICERD, International Convention on the Elimination of All Forms of Racial Discrimination	1966
	ICCPR, International Covenant on Civil and Political Rights	1992
	ICESCR, International Covenant on Economic, Social and Cultural Rights	1970
	CEDAW, Convention on the Elimination of All Forms of Discrimination against Women	1982
	CAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1986
	OPCAT, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	2011
	CRC, Convention on the Rights of the Child	1991
	CRPD, Convention on the Rights of Persons with Disabilities	2012
	CRSR, Geneva Convention Relating to the Status of Refugees	1993
	PCRSR, Protocol to the Geneva Convention Relating to the Status of Refugees	1993
	CRSSP, Convention Relating to the Status of Stateless Persons	2012
	CTOCTP, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	2001
	CTOCSP, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	2001
	VCCR, Vienna Convention on Consular Relations	1989
Ratio of relevant international treaties ratified	14/19	
Individual complaints procedure	Name	Acceptance Year
	CAT, declaration under article 22 of the Convention	1993
	CEDAW, Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999	2006
	ICCPR, First Optional Protocol to the International Covenant on Civil and Political Rights, 1966	1992
Ratio of complaints procedures accepted	Number	Observation Date
	3	2019
	3	2019

Regional treaties, regulations, and directives			
Regional legal instruments	Name		Year of Ratification (Treaty) / Transposed (Directive) / Adoption (Regulation)
	ECHR, Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)		1992
	ECHRPI, Protocol 1 to the European Convention on Human Rights (amended by protocol 11)		1992
	ECHRPI, Protocol 7 to the European Convention on Human Rights (amended by protocol 11)		2001
	ECPT, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment		1994
	CATHB, Convention on Action against Trafficking in Human Beings		2007
	CPCSE, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse		2011
	ECHRPI, Protocol 1 to the European Convention on Human Rights (amended by protocol 11)		1992
	ECHRPI, Protocol 7 to the European Convention on Human Rights (amended by protocol 11)		2000
Regional judicial decisions on individual complaints	Name	Decision Details	Observation Date
	Court of Justice of European Union (CJEU)	Kadzoev, C-357/09 PPU, 30 November 2009	2019
	European Court of Human Rights (ECtHR)	Djalti v. Bulgaria (application no. 31206/05), 12 March 2013	2019
	European Court of Human Rights (ECtHR)	S.F. and Others v. Bulgaria, Application No. 8138/16, violation of Article 3 of the ECHR with respect of the children Y.F., S.F2 and A.F., 7 December 2017	2019
	European Court of Human Rights (ECtHR)	Al-Nashif v Bulgaria, Application no. 50963/99, violation of Article 5(4), Article 8 and Article 13 of the Convention, 20 June 2002	2019
	European Court of Human Rights (ECtHR)	Aud v. Bulgaria, Application No. 46390/10, violation of Article 5.1 and Article 13 of the Convention, 11 January 2012	2019
	European Court of Human Rights (ECtHR)	Amie and Others v. Bulgaria, Application No. 58149/08, Violation of Articles 5 § 1, 5 § 4 and 8, 12 February 2013	2019
	European Court of Human Rights (ECtHR)	M. and Others v. Bulgaria, Application No. 41416/08, Violations of Article 5(1) and (4), Article 8, and Article 13, 26 July 2011	2019
	Court of Justice of European Union (CJEU)	C-146/14 PPU - Mahdi, Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 15 — Detention — Extension of detention — Obligations of the administrative or judicial authority — Review by a judicial authority — Third-country national without identity documents — Obstacles to implementation of a removal decision — Refusal of the embassy of the third country concerned to issue an identity document enabling the third-country national to be returned — Risk of absconding — Reasonable prospect of removal — Lack of cooperation — Whether the Member State concerned is under an obligation to issue a temporary document relating to the status of the person concerned, 5 June 2014	2019
	European Court of Human Rights (ECtHR)	Raza v. Bulgaria, Application no. 31465/08, 11 February 2010, Violation of Articles 5 § 1, 5 § 4, 8 and 13, 11 February 2010	2019

Non treaty-based international human rights mechanisms															
Relevant recommendations of the UN Universal Periodic Review	Recommendation Issued					Year Issued			Observation Date						
	No					2011			2019						
	Yes					2015			2019						
INSTITUTIONAL INDICATORS															
Governing structures															
Federal or centralized governing system	Federal or centralized governing system							Observation Date							
	Centralized system							2019							
Centralized or decentralized immigration authority	Centralized or decentralized immigration authority								Observation Date						
	Centralized immigration authority								2019						
Institutions responsible for immigration detention															
Custodial authority	Agency			Ministry			Ministry Typology			Observation Date					
	Migration Directorate			Ministry of the Interior			Interior or Home Affairs			2019					
Detention Facility Management	Entity Name						Entity Type			Observation Date					
	Migration Directorate, Ministry of Interior.						Governmental			2013					
Formally designated detention estate?	Formally designated immigration detention estate?					Types of officially designated detention centres						Observation Date			
	Yes					Dedicated immigration detention facilities						2016			
Types of detention facilities used in practice	Immigration detention centre (Administrative)	Immigration field office (Administrative)	Transit centre (Administrative)	Reception centre (Administrative)	Offshore detention centre (Administrative)	Hospital (Administrative)	Border guard (Administrative)	Police station (Criminal)	National penitentiary (Criminal)	Local prison (Criminal)	Juvenile detention centre (Criminal)	Informal camps (Ad hoc)	Immigration detention centre (Ad hoc)	Surge facility (Ad hoc)	Observation Date
	Yes							Yes							2017
Detention monitoring institutions															
Authorized monitoring institutions	Institution					Institution Type						Observation Date			
	Bulgarian Ombudsman					National Human Rights Institution (or Ombudsperson) (NHRI)						2019			
	Commission for Protection against Discrimination					National Human Rights Institution (or Ombudsperson) (NHRI)						2019			
	Ombudsman of the Republic of Bulgaria					OPCAT National Preventive Mechanism (NPM)						2019			
	Bulgarian Helsinki Committee,					Non-Governmental Organizations (NGO)						2019			
	Bulgarian Red Cross					Non-Governmental Organizations (NGO)						2019			
Is the national human rights institution (NHRI) recognized as independent?	ACET Centre for Torture Victims					Non-Governmental Organizations (NGO)						2019			
	Is the NHRI recognized as independent by the International Coordinating Committee of National Human Rights Institutions?												Observation Date		
Does NHRI carry out visits?	Does NHRI carry out visits in practice?								Observation Date						
	Yes								2017						
Does NHRI have capacity to receive complaints?	Does NHRI have capacity to receive complaints?									Observation Date					
	Yes									2017					
Does NHRI publicly release reports on immigration detention?	Does NHRI publicly release reports on immigration detention?										Observation Date				
	Yes										2017				
Does national preventive mechanism (NPM) carry out visits?	Does NPM carry out visits in practice?									Observation Date					
	Yes									2017					

Does NPM have capacity to receive complaints?	Does NPM have capacity to receive complaints?		Observation Date	
	Yes		2017	
Does NPM publicly release reports on immigration detention?	Does NPM publicly release reports on immigration detention?			Observation Date
	Yes			2017
Do NGOs carry out visits?	Do NGOs regularly carry our visits?			Observation Date
	Yes			2017
NGO capacity to receive complaints?	NGO capacity to receive complaints?			Observation Date
	No			2017
Do NGOs publish reports on immigration detention?	Do NGOs publish reports on immigration detention?			Observation Date
	Yes			2017
Do international and/or regional bodies (IRBs) visit immigration-related detention facilities?	Do international and/or regional bodies (IRB) regularly visit immigration-related detention facilities?			Observation Date
	infrequently			2017
Do IRBs publicly report their findings from inspections?	Do IRBs publicly report their findings from detention inspections?			Observation Date
	Yes			2017
Outsourcing and privatisation				
Types of privatisation/outsourcing	Types of Privatisation/Outsourcing			Observation Date
	Food services			2017
	Facility maintenance			2017
	Other detention facility or detainee services			2017

Detention contractors and other non-state entities	Name of entity	Type of entity	Detainee transport	Food services	Health care	Social services	Laundry services	Legal counselling	Management	Owner of detention facility	Recreation	Security	Telephone service	Translation services	Observation Date
	Aeroklima Bulgaria EOOD (Аероклима Бул ЕООД)	For profit								Yes					2017
	Ronos OOD (Ронос ООД)	For profit							Yes						2017
	Perun KKB EOOD (Перун ККБ ЕООД)	For profit							Yes						2017
	ATC Bulgaria OOD (АТЦ България ООД)	For profit							Yes						2017
	Yunis OOD (Юнис ООД)	For profit							Yes						2017
	Yunis OOD (Юнис ООД)	For profit								Yes					2017
	Klimatronik EOOD (Климатроник ЕООД)	For profit								Yes					2017
	Elma Engineering OOD (Елма Инженеринг ООД)									Yes					2017
	Sektron OOD (Сектрон ООД)											Yes			2017
	S and T Bulgaria EOOD (С & Т България ЕООД)									Yes					2017
	Right Cleaning EOOD (Райт Клининг ЕООД)									Yes					2017
	Novo Engineering EOOD (Нове Инженеринг ЕООД)	For profit								Yes					2017
	Kukuda group OOD (Кукуда груп ООД)	For profit								Yes					2017
SBI Trade EOOD (Си Би Ай Трейд ЕООД)	For profit								Yes					2017	
Expenditures															
Estimated annual budgets for particular detention-related activities			Individual detention-related activities					Estimated annual budget (in USD)				Observation Date			
								Not available				2017			
Foreign sources of funding for detention operations															
Does the country receive external sources of funding?			Benefitted from non-state funding sources?								Observation Date				
			Yes								2017				
Description of foreign assistance			Description of non-state assistance											Observation Date	
			In 2017, 54 039 006, 67 BGN were assigned to the Ministry of Interior by the EU to cope with "the increased migratory pressure". Currently the Migration Directorate implements the project "Implementation of Coercive Administrative Measures on Third-Country Nationals and Provision of Translation" under the National Program of Bulgaria under the AMIF. The deadline for the contract is October 14, 2018. Funding from the European Union amounts to € 750,000.											2017	

More information about immigration detention in Bulgaria is available at the website of the Global Detention Project (www.globaldetentionproject.org)

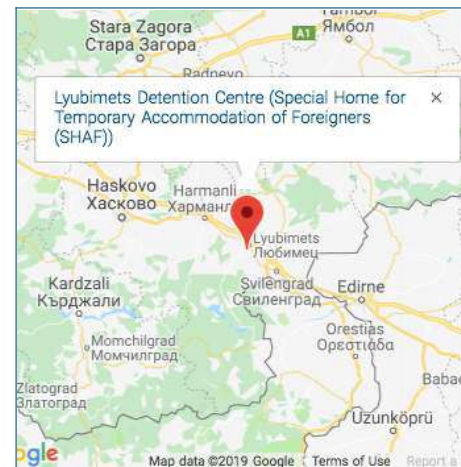
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Bulgaria Detention Centre Data Profile



Lyubimets Detention Centre
(Special Home for Temporary
Accommodation of
Foreigners (SHAF))

Global Detention Project profile produced in partnership with Red Line Project and Bulgarian Foundation for Access to Rights (FAR)



General Information

STATUS	In use
FACILITY TYPOLOGY	Administrative - Immigration detention centre
DEMOGRAPHICS	Adult men, Adult women, Accompanied minors, Families
DETAINEE CAPACITY	300
LOCATION (CITY & REGION)	Lyubimets, Europe

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/bulgaria/detention-centres/1234/lyubimets-detention-centre-special-home-for-temporary-accommodation-of-foreigners-shaf>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Lyubimets Detention Centre - Bulgaria (Photo Credit: bordermonitoring.eu)

GENERAL CHARACTERISTICS				
Status				
Center status	Status	Observation date		
	In use	2018		
Typology				
GDP facility typology	Category Filter	Type	Observation date	
	Administrative	Immigration detention centre	2018	
National typology	Name		Observation date	
	Special Home for Temporary Accommodation of Foreigners		2018	
OPERATIONAL CHARACTERISTICS				
Management and Services				
Management	Name		Type	Observation date
	Migration Directorate, Ministry of Interior.		Governmental	2019
Outsourced services and non-state actors	Provider	Service	Observation date	
	Bulgarian Red Cross		2017	
Security				
Security Regime	Security Level		Observation date	
	Secure		2019	
Detention timeframe				
Maximum official detention period at facility	Length		Observation date	
	Long-term (more than 20 days)		2017	
Estimated average detention period (days)	Number of Days		Observation date	
	52		2017	
Demographics				
Demographics	Name		Observation date	
	Adult men		2019	
	Adult women		2019	
	Accompanied minors		2019	
	Families		2019	
Categories of detainees				
Categories of detainees	Name		Observation date	
	Undocumented migrants (administrative)		2019	
	Asylum seekers (administrative)		2019	
	Recognized refugees (administrative)		2019	
Segregation				
Gender segregation	Gender Segregation		Observation date	
	Yes		2017	
Legal segregation	Legal Segregation		Observation date	
	Yes		2017	
	Yes		2017	

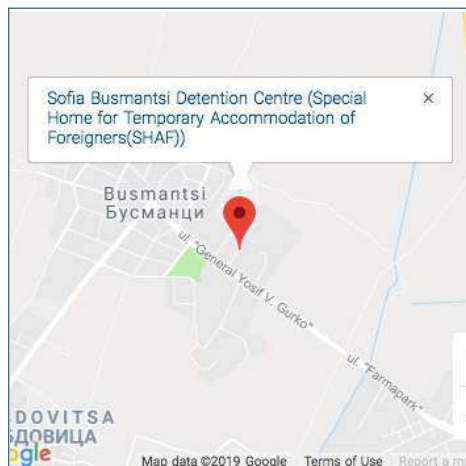
Family segregation	Family Segregation		Observation date
	Yes		2017
Age segregation	Age Segregation		Observation date
	No		2017
Size and population			
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date
	Standard capacity	300	2017
	Capacity including surge	400	2017
Total number of detainees (year)	Number		Observation date
	853		2017
Reported population at a specific time	Number		Observation date
	258		2017
Conditions			
Inspection grade	Grade		Observation date
	Deficient ("Deficient" or "At Risk")		2017
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions	Observation date
	Inadequate	Bedding and clothing	2017
	Inadequate	Showers and toilets	2017
	Inadequate	Recreation	2017
	Inadequate	Medical care	2017
	Inadequate	Food provision	2017
	Inadequate	Hygiene	2017
	Inadequate	Cell space	2017
	Adequate	Ventilation	2017
	Inadequate	State of repair	2017
Personnel			
Specially trained personnel	Trained Personnel		Observation date
	Yes		2017
Mistreatment complaints	Mistreatment Complaints		Observation date
	Yes		2017
Access			
Access by international organizations, civil society, national institutions	Yes or No	Type of institution	Observation date
	Yes	National non-governmental groups	2017
	Yes	UN High Commissioner for Refugees	2017
	Yes	International Organization for Migration	2017
	Yes	National ombudsman or human rights institution	2017
	Yes	National Preventive Mechanism under OPCAT	2017
	Yes	Bar associations or similar	2017
Family access	Family Access		Observation date
	Yes		2017
Consular access	Consular Access		Observation date
	Yes		2017

Bulgaria Detention Centre Data Profile



Sofia Busmantsi Detention Centre (Special Home for Temporary Accommodation of Foreigners (SHAF))

Global Detention Project profile produced in partnership with Red Line Project and Bulgarian Foundation for Access to Rights (FAR)



General Information	
STATUS	In use
FACILITY TYPOLOGY	Administrative - Immigration detention centre
DEMOGRAPHICS	Families, Adult women, Adult men, Accompanied minors, Families, Disabled persons
DETAINEE CAPACITY	400
LOCATION (CITY & REGION)	Sofia, Europe
CONTACT INFORMATION	ulitsa "Sredno livade" 6, 1520 Busmantsi, Bulgaria

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/bulgaria/detention-centres/1047/sofia-busmantsi-detention-centre-special-home-for-temporary-accommodation-of-foreigners-shaf>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Sofia Busmantsi Detention Centre (Special Home for Temporary Placement of Foreigners) (Bulgaria) (Photo Credit: bordermonitoring.eu)

GENERAL CHARACTERISTICS

Status		
Center status	Status	Observation date
	In use	2018

Typology			
GDP facility typology	Category Filter	Type	Observation date
	Administrative	Immigration detention centre	2018
National typology	Name		Observation date
	Special Home for Temporary Accommodation of Foreigners		2018

OPERATIONAL CHARACTERISTICS

Management and Services			
Management	Name	Type	Observation date
	Migration Directorate, Ministry of Interior.	Governmental	2013
Outsourced services and non-state actors	Provider	Service	Observation date
	Bulgarian Red Cross	Social services	2017
	Caritas	Social services	2017

Security		
Security Regime	Security Level	Observation date
	Secure	2013

Detention timeframe		
Maximum official detention period at facility	Length	Observation date
	Long-term (more than 20 days)	2017
Estimated average detention period (days)	Number of Days	Observation date
	59	2017

Demographics		
Demographics	Name	Observation date
	Families	2019
	Adult women	2019
	Adult men	2019
	Accompanied minors	2019
	Families	2019
	Disabled persons	2019

Categories of detainees		
Categories of detainees	Name	Observation date
	Undocumented migrants (administrative)	2019
	Asylum seekers (administrative)	2019
	Undocumented migrants (administrative)	2019
	Asylum seekers (administrative)	2019
	Recognized refugees (administrative)	2019

Segregation			
Gender segregation	Gender Segregation		Observation date
	Yes		2017
Legal segregation	Legal Segregation		Observation date
	Not Applicable		2017
Family segregation	Family Segregation		Observation date
	Yes		2017
Age segregation	Age Segregation		Observation date
	Yes		2017
Size and population			
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date
	Standard capacity	400	2017
Total number of detainees (year)	Number		Observation date
	1102		2017
Reported population at a specific time	Number		Observation date
	100		2010
Conditions			
Inspection grade	Grade		Observation date
	Deficient ("Deficient" or "At Risk")		2017
Reports of adequate or inadequate conditions	Adequate or inadequate?	Detention centre conditions	Observation date
	Inadequate	Bedding and clothing	2017
	Inadequate	Showers and toilets	2017
	Inadequate	Recreation	2017
	Inadequate	Medical care	2017
	Inadequate	Food provision	2017
Personnel			
Specially trained personnel	Trained Personnel		Observation date
	Yes		2017
Mistreatment complaints	Mistreatment Complaints		Observation date
	Yes		2017
Access			
Access by international organizations, civil society, national institutions	Yes or No	Type of institution	Observation date
	Yes	National non-governmental groups	2017
	Yes	UN High Commissioner for Refugees	2017
	Yes	International Organization for Migration	2017
	Yes	National ombudsman or human rights institution	2017
	Yes	National Preventive Mechanism under OPCAT	2017
	Yes	Bar associations or similar	2017

Family access	Family Access		Observation date
	Yes		2017
Consular access	Consular Access		Observation date
	Yes		2017
Deaths			
Reported deaths at this facility	Reported deaths?		Observation date
	Yes		2017
Reports of attempted or successful suicides at this facility	Suicides Reported		Observation date
	Yes		2016

More information about immigration detention in Bulgaria is available at the website of the Global Detention Project (www.globaldetentionproject.org)

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Greece Immigration Detention Data Profile

GLOBAL IMMIGRATION
DETENTION OBSERVATORY

Global Detention Project profile produced in partnership with Red Line Project and the Greek Council for Refugees

A project led by the Hungarian Helsinki Committee and funded by EPDM

QUICK FACTS	
Immigration detainees (2017)	25,810
Detained asylum seekers (2017)	9,534
Immigration detention capacity (2013)	6,290
Persons expelled (2017)	18,765
International migrants (2017)	1,220,400
New asylum applications (2016)	58,134

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/greece>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.

STATISTICS				
Detention, expulsion, and incarceration statistics				
	Observation Date			Observation Date
Total number of immigration detainees by year	25,810	2017	Number of detained asylum seekers	2017
	14,864	2016		2016
Number of apprehensions of non-citizens	68,110	2017	Number of dedicated long-term immigration detention centres	9
	204,820	2016		2017
	911,470	2015		
Estimated capacity of dedicated long-term immigration detention centres	5,212	2017	Number of transit facilities	1
	6,033	2016		2016
Number of persons removed/returned (voluntary returns and deportations)	18,765	2017	Percentage of persons removed in relation to total number of people placed in removal procedures	41
	19,055	2016		2017
	14,390	2015		2016
Criminal prison population	9,566	2017	Percentage of foreign prisoners	14
Prison population rate (per 100,000 of national population)	89	2017		2015
				2017

Demographics and immigration-related statistics					
	Observation Date			Observation Date	
Population	10,955,000	2015	International migrants	1,220,400	2017
				1,242,000	2015
International migrants as a percentage of the population	11.3	2015	Refugees	46,381	2016
				24,838	2015
Total number of new asylum applications	58,134	2016	Stateless persons	198	2016
				214	2015

DOMESTIC LAW					
Laws and regulation					
Constitutional guarantees?	Name	Constitution and Articles	Year Adopted	Last Year Amended	
	Yes	Constitution of Greece, art. 6	1975	2008	
Core pieces of national legislation	Name			Year Adopted	Last Year Amended
	Law 4375/2015 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions (Νόμος 4375/2016 «Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης σύσταση Γενικής Γραμματείας Υποδοχής, προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/32/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου «σχετικά με τις κοινές διαδικασίες για τη χορήγηση και ανάκληση του καθεστώτος διεθνούς προστασίας (αναδιатύπωση)» (L 180/29.6.2013), διατάξεις για την εργασία δικαιούχων διεθνούς προστασίας και άλλες διατάξεις)			2015	2016
	Law 3386/2005 on Entry, Residence and Social Integration of Third-Country Nationals on Greek Territory (Νόμος 3386/2005 «Είσοδος, διαμονή και κοινωνική ένταξη υπηκόων τρίτων χωρών στην Ελληνική Επικράτεια»)			2005	2015
	Law 3907/2011 on the Establishment of an Asylum Service and a First Reception Service (Νόμος 3907/2011 «Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής, προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2008/115/ΕΚ «σχετικά με τους κοινούς κανόνες και διαδικασίες στα κράτη-μέλη για την επιστροφή των παρανόμως διαμενόντων υπηκόων τρίτων χωρών» και λοιπές διατάξεις»)			2011	2016

Grounds for administrative immigration-related detention		
Immigration-status-related grounds	Name	Observation Date
	Detention to prevent absconding	2017
	Detention to effect removal	2017
	Detention for failing to respect a voluntary removal order	2017
	Detention during the asylum process	2017
	Detention to establish/verify identity and nationality	2017
Non-immigration-status-related grounds providing for administrative detention in immigration legislation.	Name	Observation Date
	Detention on public order, threats or security grounds	2017
	Detention on health-related grounds	2017

Criminalization of immigration-related offences					
Does the country provide specific criminal penalties for immigration-related violations?	Fines	Incarceration	Observation Date		
	Yes	Yes	2014		
Grounds for criminal immigration-related detention/incarceration and maximum potential duration of incarceration	Grounds for Incarceration	Maximum Number of Days of Incarceration		Observation Date	
	Unauthorized re-entry			2017	
Length of detention					
Maximum length for administrative immigration detention in law.	Number of Days		Observation Date		
	540		2017		
Maximum length of time in custody prior to issuance of a detention order	Number of Days		Observation Date		
	3		2017		
Maximum length of detention for asylum-seekers	Number of Days		Observation Date		
	90		2017		
Procedural standards					
Provision of basic procedural standards	Name		In Law	In Practice	Observation Date
	Information to detainees		Yes		2017
	Right to legal counsel		Yes		2017
	Independent review of detention		Yes		2017
	Compensation for unlawful detention		No		2017
Non-custodial measures (alternatives to detention)					
Types of non-custodial measures	Name		In Law	In Practice	Observation Date
	Supervised release and/or reporting		Yes	No	2014
	Release on bail		Yes	No	2014
	Registration (deposit of documents)		Yes	No	2014
	Designated non-secure housing		Yes	No	2014
	Electronic monitoring		No	No	2014
Vulnerable persons					
Is the detention of vulnerable persons provided in law? Are they detained in practice?	Name		In Law	In Practice	Observation Date
	Accompanied minors		Provided	Yes	2016
	Survivors of torture			Yes	2016
	Unaccompanied minors		Provided	Yes	2016
Mandatory detention					
Mandatory detention	Filter	Name		Observation Date	
	No	No		2017	
Expedited removal and re-entry ban					
Re-entry ban	Name		Observation Date		
	Yes		2017		

INTERNATIONAL LAW		
Relevant international treaties and date of ratification		
International treaties	Name	Ratification Year
	ICPED, International Convention for the Protection of All Persons from Enforced Disappearance	2015
	ICCPR, International Covenant on Civil and Political Rights	1997
	ICESCR, International Covenant on Economic, Social and Cultural Rights	1985
	ICERD, International Convention on the Elimination of All Forms of Racial Discrimination	1970
	CEDAW, Convention on the Elimination of All Forms of Discrimination against Women	1983
	CAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1988
	CRC, Convention on the Rights of the Child	1993
	CRPD, Convention on the Rights of Persons with Disabilities	2012
	CRSR, Geneva Convention Relating to the Status of Refugees	1960
	PCRSP, Protocol to the Geneva Convention Relating to the Status of Refugees	1968
	CRSSP, Convention Relating to the Status of Stateless Persons	1975
	CTOCTP, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	2011
	CTOCSP, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	2011
	VCCR, Vienna Convention on Consular Relations	1975
Ratio of relevant international treaties ratified	14/19	
Individual complaints procedure	Name	Acceptance Year
	ICCPR, First Optional Protocol to the International Covenant on Civil and Political Rights, 1966	1997
	CEDAW, Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999	1999
	CAT, declaration under article 22 of the Convention	1988
Ratio of complaints procedures accepted	Number	Observation Date
	4	2019
	4	2019
Regional legal instruments	Name	Year of Ratification (Treaty) / Transposed (Directive) / Adoption (Regulation)
	CATHB, Convention on Action against Trafficking in Human Beings	2014
	ECHR, Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)	1974
	ECHR7, Protocol 7 to the European Convention on Human Rights (amended by protocol 11)	1987
	ECHR1, Protocol 1 to the European Convention on Human Rights (amended by protocol 11)	1974
	ECPT, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment	1991
	CPCSE, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	2009
	ECCF, European Convention on Consular Functions	1983

Regional judicial decisions on individual complaints	Name	Decision Details	Observation Date
	European Court of Human Rights (ECtHR)	S.D. v. Greece. 53541/07. 11 June 2009	2019
	European Court of Human Rights (ECtHR)	Tabesh v. Greece. 8256/07. ECtHR. 26 November 2009	2019
	European Court of Human Rights (ECtHR)	A.A. v. Greece. 12186/08. ECtHR. 22 July 2010	2019
	European Court of Human Rights (ECtHR)	M.S.S. v. Belgium and Greece. 30696/09. ECtHR. 21 January 2011	2019
	European Court of Human Rights (ECtHR)	Rahimi v. Greece. 8687/08. ECtHR. 5 April 2011	2019
	European Court of Human Rights (ECtHR)	R.U. v. Greece. 2237/08. ECtHR. 7 June 2011	2019
	European Court of Human Rights (ECtHR)	Efremidze v. Greece. 33225/08. ECtHR. 21 June 2011	2019
	European Court of Human Rights (ECtHR)	Mahmundi and others v. Greece. 14902/10. ECtHR. 31 July 2012	2019
	European Court of Human Rights (ECtHR)	Bygylashvili v. Greece. 58164/10. ECtHR. 25 September 2012	2019
	European Court of Human Rights (ECtHR)	Lin v. Greece. 58158/10. ECtHR. 6 November 2012	2019
	European Court of Human Rights (ECtHR)	Khuroshvili v. Greece. 58165/10. ECtHR. 12 December 2013	2019
	Court of Justice of European Union (CJEU)	N.S and M.E. Joined Cases C-411/10 and C-493/10. 21 December 2011.	2019
	European Court of Human Rights (ECtHR)	A.F. v. Greece. 53709/11, 7 October 2013.	2019
	European Court of Human Rights (ECtHR)	Mahammad and others v. Greece. 48352/12, 15 January 2015.	2019
	European Court of Human Rights (ECtHR)	Tatishvili v. Greece. 26452/11, 31 July 2014.	2019
	European Court of Human Rights (ECtHR)	Horshill v. Greece. 70427/11, 1 August 2013.	2019
Non treaty-based international human rights mechanisms			
Visits by special procedures of the Human Rights Council	Name	Year of Visit	Observation Date
	Working Group on arbitrary detention	2013	2019
	Special Rapporteur on the human rights of migrants	2012	2019
	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	2010	2019
	Special Rapporteur on the sale of children, child prostitution and child pornography	2005	2019
Relevant recommendations of the UN Universal Periodic Review	Recommendation Issued	Year Issued	Observation Date
	Yes	2011	2019
	Yes	2016	2019
INSTITUTIONAL INDICATORS			
Governing structures			
Federal or centralized governing system	Federal or centralized governing system	Observation Date	
	Centralized system	2019	
Centralized or decentralized immigration authority	Centralized or decentralized immigration authority	Observation Date	
	Centralized immigration authority	2019	

Institutions responsible for immigration detention															
Custodial authority		Agency				Ministry			Ministry Typology			Observation Date			
						Ministry of Citizen Protection			Internal or Public Security			2019			
		Reception and Identification Service				Ministry of Migration Policy			Immigration or Citizenship			2019			
Detention Facility Management		Entity Name				Entity Type			Observation Date						
		Police				Governmental			2017						
Formally designated detention estate?		Formally designated immigration detention estate?				Types of officially designated detention centres						Observation Date			
		Yes				Dedicated immigration detention facilities						2017			
Types of detention facilities used in practice	Immigration detention centre (Administrative)	Immigration field office (Administrative)	Transit centre (Administrative)	Reception centre (Administrative)	Offshore detention centre (Administrative)	Hospital (Administrative)	Border guard (Administrative)	Police station (Criminal)	National penitentiary (Criminal)	Local prison (Criminal)	Juvenile detention centre (Criminal)	Informal camp (Ad hoc)	Immigration detention centre (Ad hoc)	Surge facility (Ad hoc)	Observation Date
	Yes		Yes	Yes				Yes							2016
Detention monitoring institutions															
Authorized monitoring institutions		Institution				Institution Type						Observation Date			
		European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment				International or Regional Bodies (IRBs)						2016			
		Greek Ombudsman				OPCAT National Preventive Mechanism (NPM)						2016			
		AITIMA				Non-Governmental Organizations (NGO)						2016			
Is the national human rights institution (NHRI) recognized as independent?		Is the NHRI recognized as independent by the International Coordinating Committee of National Human Rights Institutions?										Observation Date			
		Yes										2016			
Does NHRI carry out visits?		Does NHRI carry out visits in practice?								Observation Date					
		Yes								2016					
Does NHRI publicly release reports on immigration detention?		Does NHRI publicly release reports on immigration detention?									Observation Date				
		Yes									2016				
Does national preventive mechanism (NPM) carry out visits?		Does NPM carry out visits in practice?								Observation Date					
		Yes								2016					
Does NPM publicly release reports on immigration detention?		Does NPM publicly release reports on immigration detention?									Observation Date				
		Yes									2016				
Do NGOs carry out visits?		Do NGOs regularly carry our visits?							Observation Date						
		Yes							2016						
Do NGOs publish reports on immigration detention?		Do NGOs publish reports on immigration detention?								Observation Date					
		Yes								2016					
Do international and/or regional bodies (IRBs) visit immigration-related detention facilities?		Do international and/or regional bodies (IRB) regularly visit immigration-related detention facilities?										Observation Date			
		Yes										2016			
Do IRBs publicly report their findings from inspections?		Do IRBs publicly report their findings from detention inspections?									Observation Date				
		Yes									2016				

Outsourcing and privatisation														
Types of privatisation/outsourcing		Types of Privatisation/Outsourcing										Observation Date		
		Health services										2013		
Detention contractors and other non-state entities	Name of entity	Type of entity	Detainee transport	Food services	Health care	Social services	Laundry services	Legal counselling	Management	Owner of detention facility	Recreation	Security	Telephone service	Translation services
	Medical Intervention	Not for profit			Yes									2013
	Medecins sans Frontières	Not for profit			Yes									2013
Foreign sources of funding for detention operations														
Does the country receive external sources of funding?		Benefitted from non-state funding sources?										Observation Date		
		Yes										2017		
Description of foreign assistance		Description of non-state assistance										Observation Date		
		EU financial assistance: On 16 August 2017, the national programme for Greece under the Asylum, Migration and Integration Fund was revised to reinforce the policy priorities for integration and return with additional funds (EUR 28 million). This brings the total amount allocated to Greece's national programmes under the Asylum, Migration and Integration Fund and the Internal Security Fund to EUR 537 million available for the 2014-2020 period. In addition, substantial emergency assistance from the Asylum, Migration and Integration Fund and the Internal Security Fund, amounting to approximately EUR 371.2 million, has been provided since 2015 to help Greece reinforce its reception facilities and strengthen the country's migration, asylum and border management capacities. As of 4 September 2017, EUR 410.6 million of the Instrument for Emergency Support within the EU has been contracted with 15 humanitarian partners.										2017		

Greece Detention Centre Data Profile



Fylakio Pre-removal Detention Centre (formerly Fylakio Special Holding Facility for irregular migrants)

Global Detention Project profile produced in partnership with Red Line Project and the Greek Council for Refugees



General Information	
STATUS	In use
FACILITY TYPOLOGY	Administrative - Immigration detention centre
DEMOGRAPHICS	Adult women, Adult men, Families
DETAINEE CAPACITY	620
LOCATION (CITY & REGION)	Fylakio, Orestiada, Evros, Thrace, Europe
CONTACT INFORMATION	Epar.Od. Orestiadas - Zonis Kiprinos 680 06 Greece

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/greece/detention-centres/387/fylakio-pre-removal-detention-centre-formerly-fylakio-special-holding-facility-for-irregular-migrants>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Fylakio pre-removal detention centre (Photo credit: Close the Camps, <http://en.close.thecamps.org/camp/314>)

More information about immigration detention in Greece is available at the website of the Global Detention Project (www.globaldetentionproject.org)

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GENERAL CHARACTERISTICS			
Status			
Center status	Status	Observation date	
	In use	2019	
Typology			
GDP facility typology	Category Filter	Type	Observation date
	Administrative	Immigration detention centre	2018
OPERATIONAL CHARACTERISTICS			
Management and Services			
Management	Name	Type	Observation date
	Police	Governmental	2016
Security			
Security Regime	Security Level	Observation date	
	Secure	2019	
Detention timeframe			
Maximum official detention period at facility	Length	Observation date	
	Long-term (more than 20 days)	2019	
Demographics			
Demographics	Name	Observation date	
	Adult women	2019	
	Adult men	2019	
	Families	2019	
Segregation			
Gender segregation	Gender Segregation		Observation date
	Yes		2011
Age segregation	Age Segregation		Observation date
	Yes		2011
Size and population			
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date
	Standard capacity	620	2016
Reported population at a specific time	Number	Observation date	
	112	2016	
Conditions			
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions	Observation date
	Inadequate	Lighting	2013
	Inadequate	Hygiene	2013
	Inadequate	Cell space	2013
	Inadequate	Recreation	2013
	Inadequate	Outdoor exercise	2013

Greece Detention Centre Data Profile



Samos Vathy Reception and Identification Centre

Global Detention Project profile produced in partnership with Red Line Project and the Greek Council for Refugees

THE RED LINE PROJECT
A project led by the Hungarian Helsinki Committee and funded by EPRF



General Information	
STATUS	In use
FACILITY TYPOLOGY	Administrative - Secure reception centre
DEMOGRAPHICS	Unaccompanied minors, Families, Accompanied minors, Adult men, Adult women
DETAINEE CAPACITY	648
LOCATION (CITY & REGION)	Island of Samos, North Aegean, Europe

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/greece/detention-centres/388/samos-vathy-reception-and-identification-centre>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Vathy (Photo Credit: Joseph Boyle, <https://euobserver.com/migration/134184>)

GENERAL CHARACTERISTICS			
Status			
Center status	Status	Observation date	
	In use	2019	
Typology			
GDP facility typology	Category Filter	Type	Observation date
	Administrative	Secure reception centre	2019
National typology	Name		Observation date
	Reception and Identification Centre		2019
OPERATIONAL CHARACTERISTICS			
Management and Services			
Management	Name	Type	Observation date
	Reception and Identification Service	Governmental	2018
Security			
Security Regime	Security Level		Observation date
	Non-secure		2019
	Secure		2019
Detention timeframe			
Maximum official detention period at facility	Length		Observation date
	Medium-term (4-20 days)		2019
Demographics			
Demographics	Name		Observation date
	Unaccompanied minors		2019
	Families		2019
	Accompanied minors		2019
	Adult men		2019
	Adult women		2019
Categories of detainees			
Categories of detainees	Name		Observation date
	Undocumented migrants (administrative)		2019
	Asylum seekers (administrative)		2019
Segregation			
Gender segregation	Gender Segregation		Observation date
	Yes		2019
	No		2019
Legal segregation	Legal Segregation		Observation date
	Not Applicable		2019

Family segregation	Family Segregation		Observation date
	Yes		2019
Age segregation	Age Segregation		Observation date
	Yes		2019
	No		2019
Size and population			
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date
	Standard capacity	648	2019
Reported population at a specific time	Number		Observation date
	3723		2018
	2676		2018
Reported overpopulation	Reported Overpopulation		Observation date
	Yes		2018
Conditions			
Inspection grade	Grade		Observation date
	Deficient ("Deficient" or "At Risk")		2018
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions	Observation date
	Inadequate	Hygiene	2018
	Inadequate	Showers and toilets	2018
	Inadequate	Overcrowding	2018
	Inadequate	Recreation	2018
	Inadequate	Medical care	2018
	Inadequate	Access to clean drinking water	2018
	Inadequate	Access to internet	2018
	Inadequate	Food provision	2018
Access			
Consular access	Consular Access		Observation date
	Yes		2018

More information about immigration detention in Greece is available at the website of the Global Detention Project (www.globaldetentionproject.org)

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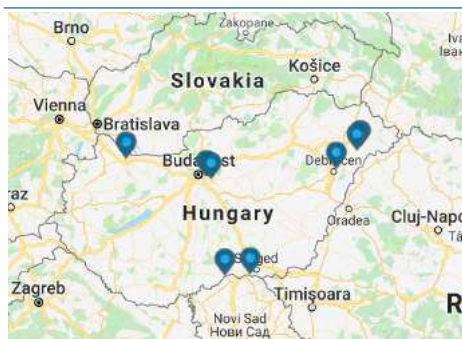
Hungary Immigration Detention Data Profile



Global Detention Project profile produced in partnership with Hungarian Helsinki Committee and Red Line Project



THE RED LINE PROJECT
A project led by the Hungarian Helsinki Committee and funded by EPRF



QUICK FACTS

Immigration detainees (2017)	2,953
Detained asylum seekers (2017)	2,498
Detained minors (2017)	Not Available
Immigration detention capacity (2018)	1,032
Persons expelled (2017)	2,445
International migrants (2017)	503,800
New asylum applications (2017)	3,397

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/hungary/>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.

STATISTICS

Detention, expulsion, and incarceration statistics

	Observation Date			Observation Date	
Total number of immigration detainees by year	2,953	2017	Number of persons granted alternatives to immigration detention	Not Available	2017
Number of detained asylum seekers	2,498	2017	Total number of detained minors	Not Available	2017
Number of detained accompanied minors	Not Available	2017	Number of apprehensions of non-citizens	25,730	2017
Immigration detainees as a percentage of total international migrant population	Not Available	2017	Estimated total immigration detention capacity	1,032	2018
Number of dedicated long-term immigration detention centres	6	2018	Estimated capacity of dedicated long-term immigration detention centres	1,024	2018
Number of dedicated medium-term immigration detention centres	1	2018	Number of transit facilities	2	2018
Number of persons removed/returned (voluntary returns and deportations)	2,445	2017	Number of deportations/forced returns only	2,020	2017
Percentage of persons removed in relation to total number of people placed in removal procedures	28	2017	Criminal prison population	17,343	2017
Percentage of foreign prisoners	4.95	2017	Prison population rate (per 100,000 of national population)	185	2016

Demographics and immigration-related statistics

	Observation Date			Observation Date	
Population	9,669,709	2019	International migrants	503,800	2017
International migrants as a percentage of the population	4.6	2014	Estimated number of undocumented migrants	Not Available	2017
Refugees	4,691	2016	Ratio of refugees per 1000 inhabitants	0.29	2014
Total number of new asylum applications	3,397	2017	Refugee recognition rate	31	2017
Stateless persons	139	2017			

DOMESTIC LAW

LAWS AND REGULATIONS

Constitutional guarantees?	Name	Constitution and Articles	Year Adopted	Last Year Amended
	Yes	The Fundamental law of Hungary, Article IV		2018
Core pieces of national legislation	Name		Year Adopted	Last Year Amended
	Act LXXX of 2007 on Asylum (Asylum Act)		2007	2019
Regulations, standards, guidelines	Name		Year Published	
	Government Decree 114/2007 on the Implementation of Third-Country Nationals Act		2007	
	Name		Year Published	
	Government Decree 301/2007 on the Implementation of the Asylum Act		2007	

GROUND FOR ADMINISTRATIVE IMMIGRATION-RELATED DETENTION

Immigration-status-related grounds	Name		Observation Date
	Detention to ensure transfer under the Dublin Regulation		2019
	Detention after readmission		2019
	Detention to prevent absconding		2019
	Detention for failing to respect non-custodial measures		2019
	Detention to prevent unauthorised entry at the border		2019
	Detention pending transfer to another Schengen country		2019
	Detention during the asylum process		2019
	Detention for failing to respect a voluntary removal order		2019
	Detention for unauthorized stay resulting from criminal conviction		2019
	Detention to establish/verify identity and nationality		2019
	Detention to effect removal		2019

CRIMINALIZATION OF IMMIGRATION-RELATED OFFENCES

Does the country provide specific criminal penalties for immigration-related violations?	Fines	Incarceration	Observation Date
	Yes	Yes	2017
Grounds for criminal immigration-related detention/incarceration and maximum potential duration of incarceration	Grounds for Incarceration	Maximum Number of Days of Incarceration	Observation Date
	Unauthorized entry	1095	2019

Has the country decriminalized immigration-related violations?	Has the country decriminalized immigration-related violations?		Observation Date		
	No		2017		
LENGTH OF DETENTION					
Maximum length for administrative immigration detention in law.	Number of Days		Observation Date		
	No Limit		2019		
	356		2019		
Longest recorded instance of immigration detention.	Number of Days		Observation Date		
	515		2019		
Maximum length of time in custody prior to issuance of a detention order	Number of Days		Observation Date		
	3		2016		
Maximum length of detention for asylum-seekers	Number of Days		Observation Date		
	No Limit		2019		
	180		2019		
	30		2019		
Maximum length of detention for persons detained upon arrival at ports of entry	Number of Days		Observation Date		
	No Limit		2019		
PROCEDURAL STANDARDS					
Provision of basic procedural standards	Name		In Law	In Practice	Observation Date
	Information to detainees		Yes	Yes	2019
	Right to legal counsel		Yes	Yes	2019
	Independent review of detention		Yes	Yes	2019
	Right to appeal the lawfulness of detention		No	No	2019
	Complaints mechanism regarding detention conditions		Yes		2019
	Independent review of detention		Yes	Yes	2019
	Complaints mechanism regarding detention conditions		No	No	2019
NON-CUSTODIAL MEASURES (ALTERNATIVES TO DETENTION)					
Types of non-custodial measures	Name		In Law	In Practice	Observation Date
	Release on bail		Yes	No	2014
	Supervised release and/or reporting		Yes	infrequently	2014
	Electronic monitoring		No	No	2014
	Registration (deposit of documents)		Yes	infrequently	2014
	Designated non-secure housing		Yes	infrequently	2014

VULNERABLE PERSONS				
Is the detention of vulnerable persons provided in law? Are they detained in practice?	Name	In Law	In Practice	Observation Date
	Accompanied minors	Provided	Yes	2019
	Unaccompanied minors	Provided	Yes	2019
	Asylum seekers	Provided	Yes	2019
	Elderly	Provided	Yes	2019
	Pregnant women	Provided	Yes	2019
	Persons with disabilities	Provided	Yes	2019
	Survivors of torture	Provided	Yes	2019
	Victims of trafficking	Provided	Yes	2019
	Women	Provided	Yes	2019
EXPEDITED REMOVAL AND RE-ENTRY BAN				
Expedited/fast track removal	Name		Observation Date	
	Yes		2014	
Re-entry ban	Name		Observation Date	
	Yes		2014	
INTERNATIONAL LAW				
Relevant international treaties and date of ratification				
International treaties	Name			Ratification Year
	ICCPR, International Covenant on Civil and Political Rights			1974
	ICESCR, International Covenant on Economic, Social and Cultural Rights			1974
	ICERD, International Convention on the Elimination of All Forms of Racial Discrimination			1967
	CEDAW, Convention on the Elimination of All Forms of Discrimination against Women			1980
	CAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			1987
	OPCAT, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			2012
	CRC, Convention on the Rights of the Child			1991
	CRPD, Convention on the Rights of Persons with Disabilities			2007
	CRSR, Geneva Convention Relating to the Status of Refugees			1989
	PCRSR, Protocol to the Geneva Convention Relating to the Status of Refugees			1989
	CRSSP, Convention Relating to the Status of Stateless Persons			2001
	CTOCTP, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children			2006
	CTOCSP, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime			2006
VCCR, Vienna Convention on Consular Relations			1987	
Ratio of relevant international treaties ratified	14/19			

Individual complaints procedure	Name		Acceptance Year
	ICCPR, First Optional Protocol to the International Covenant on Civil and Political Rights, 1966		1988
	ICERD, declaration under article 14 of the Convention		1989
	CEDAW, Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999		2000
	CAT, declaration under article 22 of the Convention		1989
	CRPD, Optional Protocol to o the Convention on the Rights of Persons with Disabilities		2007
Ratio of complaints procedures accepted	Number	Observation Date	
	5	2019	
Regional treaties, regulations, and directives			
Regional legal instruments	Name		Year of Ratification (Treaty) / Transposed (Directive) / Adoption (Regulation)
	CPCSE, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse		2015
	Dublin Regulation		
	Procedures Directive (Recast)		
	Reception Conditions Directive (Recast)		
	ECHR, Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)		1992
	ECHR7, Protocol 7 to the European Convention on Human Rights (amended by protocol 11)		1992
	ECHR1, Protocol 1 to the European Convention on Human Rights (amended by protocol 11)		1992
	ECPT, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment		1993
	CATHB, Convention on Action against Trafficking in Human Beings		2013
	Return Directive		2010
Regional judicial decisions on individual complaints	Name	Decision Details	Observation Date
	European Court of Human Rights (ECtHR)	Nabil and Others v. Hungary	2019
	European Court of Human Rights (ECtHR)	Al-Tayyar Abdelhakim v. Hungary. 13058/11. 23 October 2012	2019
	European Court of Human Rights (ECtHR)	Hendrin Ali Said and Aras Ali Said v. Hungary. 13457/11. 23 October 2012	2019
	European Court of Human Rights (ECtHR)	Lopko and Touré v. Hungary. 10816/10. 20 September 2011	2019
	European Court of Human Rights (ECtHR)	O.M. v. Hungary	2019
	European Court of Human Rights (ECtHR)	Ilias and Ahmed v. Hungary (not final)	2019
	Non treaty-based international human rights mechanisms		
Visits by special procedures of the Human Rights Council	Name	Year of Visit	Observation Date
	Working Group on arbitrary detention	2013	2019
	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	2011	2019
	Working Group on arbitrary detention	2018	2019

Relevant recommendations of the UN Universal Periodic Review	Recommendation Issued				Year Issued		Observation Date								
	Yes				2011		2019								
	Yes				2016		2019								
INSTITUTIONAL INDICATORS															
Governing structures															
Federal or centralized governing system	Federal or centralized governing system						Observation Date								
	Centralized system						2019								
Centralized or decentralized immigration authority	Centralized or decentralized immigration authority						Observation Date								
	Centralized immigration authority						2019								
Institutions responsible for immigration detention															
Custodial authority	Agency				Ministry		Ministry Typology		Observation Date						
	Office of Immigration and Nationality				Ministry of Interior		Interior or Home Affairs		2019						
Detention Facility Management	Entity Name				Entity Type			Observation Date							
	Police				Governmental			2019							
	Office of Immigration and Nationality				Governmental			2019							
Formally designated detention estate?	Formally designated immigration detention estate?				Types of officially designated detention centres						Observation Date				
	Yes				Dedicated immigration detention facilities						2019				
Types of detention facilities used in practice	Immigration detention centre (Administrative)	Immigration field office (Administrative)	Transit centre (Administrative)	Reception centre (Administrative)	Offshore detention centre (Administrative)	Hospital (Administrative)	Border guard (Administrative)	Police station (Criminal)	National penitentiary (Criminal)	Local prison (Criminal)	Juvenile detention centre (Criminal)	Informal camp (Ad hoc)	Immigration detention centre (Ad hoc)	Surge facility (Ad hoc)	Observation Date
	Yes		Yes												2019
Detention monitoring institutions															
Authorized monitoring institutions	Institution						Institution Type						Observation Date		
	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)						International or Regional Bodies (IRBs)						2019		
	Office of the Commissioner for Fundamental Rights						National Human Rights Institution (or Ombudsperson) (NHRI)						2019		
Is the national human rights institution (NHRI) recognized as independent?	Is the NHRI recognized as independent by the International Coordinating Committee of National Human Rights Institutions?											Observation Date			
	Yes											2019			
Does NHRI carry out visits?	Does NHRI carry out visits in practice?								Observation Date						
	Yes								2019						
Does NHRI have capacity to receive complaints?	Does NHRI have capacity to receive complaints?								Observation Date						
	Yes								2019						
Does NHRI publicly release reports on immigration detention?	Does NHRI publicly release reports on immigration detention?										Observation Date				
	Yes										2019				
Does national preventive mechanism (NPM) carry out visits?	Does NPM carry out visits in practice?								Observation Date						
	No								2019						
	Yes								2019						

Does NPM publicly release reports on immigration detention?	Does NPM publicly release reports on immigration detention?	Observation Date
	Yes	2015
Do NGOs carry out visits?	Do NGOs regularly carry out visits?	Observation Date
	No	2019
Do NGOs publish reports on immigration detention?	Do NGOs publish reports on immigration detention?	Observation Date
	No	2019
Do international and/or regional bodies (IRBs) visit immigration-related detention facilities?	Do international and/or regional bodies (IRB) regularly visit immigration-related detention facilities?	Observation Date
	Yes	2019
Do IRBs publicly report their findings from inspections?	Do IRBs publicly report their findings from detention inspections?	Observation Date
	Yes	2019

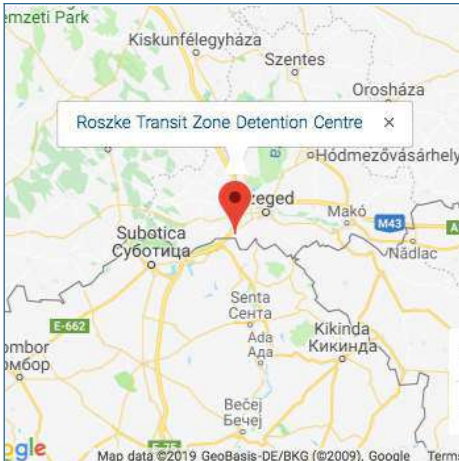
Hungary Detention Centre Data Profile

Roszke Transit Zone Detention Centre

Global Detention Project profile produced in partnership with Hungarian Helsinki Committee and Red Line Project

 **THE RED LINE PROJECT**
A project led by the Hungarian Helsinki Committee and funded by EPDM

 **GLOBAL DETENTION PROJECT**



General Information	
STATUS	In use
FACILITY TYPOLOGY	Administrative - Transit centre
DEMOGRAPHICS	Adult men, Unaccompanied minors, Accompanied minors, Families, Disabled persons, LGBTI persons, Adult women
DETAINEE CAPACITY	450
LOCATION (CITY & REGION)	Roszke, Csongrád country, Europe

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/hungary/detention-centres/1938/roszke-transit-zone-detention-centre>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Roszke Transit Zone (Photo Credit: MP Ákos Hadházy, 22 August 2018, <https://bit.ly/2E4nLCD>)

More information about immigration detention in Hungary is available at the website of the Global Detention Project (www.globaldetentionproject.org)

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GENERAL CHARACTERISTICS			
Status			
Center status	Status	Observation date	
	In use	2019	
Typology			
GDP facility typology	Category Filter	Type	Observation date
	Administrative	Transit centre	2018
National typology	Name		Observation date
	Transit Zone (Temporary Security Boundary)		2018
Operating Period			
Operating period	Year of Entry		Year Ceased
	2015		
OPERATIONAL CHARACTERISTICS			
Management and Services			
Management	Name	Type	Observation date
	The Immigration and Asylum Office	Governmental	2018
Security			
Security Regime	Security Level		Observation date
	Secure		2018
Detention timeframe			
Maximum official detention period at facility	Length		Observation date
	Long-term (more than 20 days)		2018
Reported overstays at facility	Reported Overstays		Observation date
	Yes		2018
Demographics			
Demographics	Name		Observation date
	Adult men		2018
	Unaccompanied minors		2018
	Accompanied minors		2018
	Families		2018
	Disabled persons		2018
	LGBTI persons		2018
	Adult women		2018

Categories of detainees			
Categories of detainees	Name		Observation date
	Asylum seekers (administrative)		2018
Segregation			
Gender segregation	Gender Segregation		Observation date
	Yes		2018
Legal segregation	Legal Segregation		Observation date
	Not Applicable		2018
Family segregation	Family Segregation		Observation date
	Yes		2018
Age segregation	Age Segregation		Observation date
	Yes		2018
Size and population			
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date
	Standard capacity	450	2018
Occupancy rate	Percentage		Observation date
	20		2018
Total number of detainees (year)	Number		Observation date
	1252		2017
Reported population at a specific time	Number		Observation date
	221		2017
Reported overpopulation	Reported Overpopulation		Observation date
	No		2018
Conditions			
Inspection grade	Grade		Observation date
	Deficient ("Deficient" or "At Risk")		2018
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions	Observation date
	Inadequate	Separation of different categories of detainees	2017
	Inadequate	Medical care	2017
	Inadequate	Temperature	2017
	Inadequate	Access to telephones	2017
	Inadequate	Recreation	2017
	Inadequate	Temperature	2017
	Inadequate	Food provision	2017
Personnel			
Specially trained personnel	Trained Personnel		Observation date
	Yes		2018

Mistreatment complaints	Mistreatment Complaints		Observation date
	Not Available		2018
Access			
Access by international organizations, civil society, national institutions	Yes or No	Type of institution	Observation date
	No	National non-governmental groups	2018
	Yes	UN High Commissioner for Refugees	2018
Family access	Family Access		Observation date
	Yes		2018
Consular access	Consular Access		Observation date
	No		2018
Deaths			
Reported deaths at this facility	Reported deaths?		Observation date
	No		2018
Reports of attempted or successful suicides at this facility	Suicides Reported		Observation date
	Yes		2018

Hungary Detention Centre Data Profile

GLOBAL IMMIGRATION DETENTION OBSERVATORY

Tompa Transit Zone Detention Centre

Global Detention Project profile produced in partnership with Hungarian Helsinki Committee and Red Line Project

A project led by the Hungarian Helsinki Committee and funded by EPRM

General Information

STATUS	In use
FACILITY TYPOLOGY	Administrative - Transit centre
DEMOGRAPHICS	Accompanied minors, Families, Disabled persons, LGBTI persons, Adult women, Adult men
DETAINEE CAPACITY	250
LOCATION (CITY & REGION)	Tompa, Bács-Kiskun country, Europe

Map showing the location of Tompa Transit Zone Detention Centre in Hungary, near Szeged. The map includes labels for various cities and regions in Hungary and neighboring countries like Serbia and Romania.

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/hungary/detention-centres/1939/tompa-transit-zone-detention-centre>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.

Tompa Transit Zone Detention Centre (Photo Credit: UNHCR 2016)

GENERAL CHARACTERISTICS			
Status			
Center status	Status	Observation date	
	In use	2019	
Typology			
GDP facility typology	Category Filter	Type	Observation date
	Administrative	Transit centre	2018
National typology	Name		Observation date
	Transit Zone (Temporary Security Boundary)		2018
Operating Period			
Operating period	Year of Entry		Year Ceased
	2015		
OPERATIONAL CHARACTERISTICS			
Management and Services			
Management	Name	Type	Observation date
	The Immigration and Asylum Office	Governmental	2018
Security			
Security Regime	Security Level	Observation date	
	Secure	2018	
Armed guards	Armed Guards?	Observation date	
	Yes	2018	
Detention timeframe			
Maximum official detention period at facility	Length		Observation date
	Long-term (more than 20 days)		2018
Reported overstays at facility	Reported Overstays		Observation date
	Yes		2018
Demographics			
Demographics	Name		Observation date
	Accompanied minors		2018
	Families		2018
	Disabled persons		2018
	LGBTI persons		2018
	Adult women		2018
	Adult men		2018

Categories of detainees			
Categories of detainees	Name		Observation date
	Asylum seekers (administrative)		2018
Segregation			
Gender segregation	Gender Segregation		Observation date
	Yes		2018
Legal segregation	Legal Segregation		Observation date
	Not Applicable		2018
Family segregation	Family Segregation		Observation date
	Yes		2018
Age segregation	Age Segregation		Observation date
	Yes		2018
Size and population			
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date
	Standard capacity	250	2018
Occupancy rate	Percentage		Observation date
	30		2018
Total number of detainees (year)	Number		Observation date
	855		2017
Reported population at a specific time	Number		Observation date
	185		2017
Reported overpopulation	Reported Overpopulation		Observation date
	No		2018
Conditions			
Inspection grade	Grade		Observation date
	Deficient (“Deficient” or “At Risk”)		2018
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions	Observation date
	Inadequate	Separation of different categories of detainees	2017
	Inadequate	Medical care	2017
	Inadequate	Temperature	2017
	Inadequate	Access to telephones	2017
	Inadequate	Recreation	2017
	Inadequate	Temperature	2017
	Inadequate	Food provision	2017

Personnel			
Specially trained personnel	Trained Personnel		Observation date
	Yes		2018
Mistreatment complaints	Mistreatment Complaints		Observation date
	Not Available		2018
Access			
Access by international organizations, civil society, national institutions	Yes or No	Type of institution	Observation date
	Yes	UN High Commissioner for Refugees	2018
Family access	Family Access		Observation date
	Yes		2018
Consular access	Consular Access		Observation date
	No		2018
Deaths			
Reported deaths at this facility	Reported deaths?		Observation date
	No		2018
Reports of attempted or successful suicides at this facility	Suicides Reported		Observation date
	Not Available		2018

Italy Immigration Detention Data Profile



Global Detention Project profile produced in partnership with Italian Refugee Council and Red Line Project






A project led by the Hungarian Helsinki Committee and funded by ERFM



QUICK FACTS

Immigration detainees (2017)	44,621
Detained asylum seekers (2013)	150
Immigration detention capacity (2018)	1,984
Persons expelled (2018)	13,572
International migrants (2017)	5,907,500
New asylum applications (2018)	53,500
Number of immigration detainees on a given day (2017)	1,036

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/italy>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.

STATISTICS					
Detention, expulsion, and incarceration statistics					
		Observation Date			Observation Date
Total number of immigration detainees by year	44,621	2017	Number of immigration detainees on a given day	1,036	2017
	2,984	2016		417	2017
	5,242	2015			
Top nationalities of detainees	Tunisia, Nigeria, Morocco, Algeria, Egypt	2017	Number of apprehensions of non-citizens	36,230	2017
				32,365	2016
				27,305	2015
Immigration detainees as a percentage of total international migrant population	0.09	2015	Estimated total immigration detention capacity	1,984	2018
Number of dedicated long-term immigration detention centres	5	2018	Estimated capacity of dedicated long-term immigration detention centres	538	2018
	4	2017		359	2017
	5	2015		1,066	2015
Number of ad hoc facilities	4	2018	Number of persons removed/returned (voluntary returns and deportations)	13,572	2018
	4	2017		7,045	2017
				5,715	2016
				4,670	2015

More information about immigration detention in Hungary is available at the website of the Global Detention Project (www.globaldetentionproject.org)

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Number of deportations/forced returns only	5,323	2018	Percentage of persons removed in relation to total number of people placed in removal procedures	19	2017
	4,935	2017		18	2016
	4,505	2016		17	2015
	3,655	2015			
	4,330	2014			
Criminal prison population	56,289	2017	Percentage of foreign prisoners	34	2017
Prison population rate (per 100,000 of national population)	93	2017			
Demographics and immigration-related statistics					
		Observation Date			Observation Date
Population	60,483,973	2017	International migrants	5,907,500	2017
	59,798,000	2015		5,788,900	2015
International migrants as a percentage of the population	9.7	2015	Estimated number of undocumented migrants	28,659	2018
Refugees	11,393	2018	Total number of new asylum applications	53,500	2018
	147,302	2016		122,905	2016
	118,047	2015		123,600	2016
Refugee recognition rate	12	2018	Stateless persons	732	2018
	5	2016		701	2016
				747	2015
				606	2015
DOMESTIC LAW					
Laws and regulations					
Constitutional guarantees?	Name	Constitution and Articles		Year Adopted	Last Year Amended
	Yes	Constitution of the Republic of Italy, article 13		2007	2007
Core pieces of national legislation	Name			Year Adopted	Last Year Amended
	Law 46/2017 "Conversione in legge, con modificazioni, del decreto-legge 17 febbraio 2017, n. 13, recante disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale."			2017	2017
	Law 47/2017 "Provisions on Protective Measures for Unaccompanied Foreign Minors"			2017	2017
	Legislative Decree 142/2015 "Implementation of Directive 2013/33/EU on standards for the reception of asylum applicants and the Directive 2013/32/EU on common procedures for the recognition and revocation of the status of international protection."			2015	2015
	Legislative Decree no. 25/2008 on minimum standards on procedures in Member States for granting and withdrawing refugee status			2008	2011
	Legislative Decree no. 129/2011 Urgent provisions for the full application of the Directive 2004/38/EC on the free movement of EU citizens and for the transposition of the Directive 2008/115/EC on returning illegally staying third-country nationals				2011
	The Consolidated Immigration Act			1998	2018
	D.lgs n. 142/2015 "Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale."			2015	2018
	D. Lgs n.25/2008 "Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato"			2008	2018
	Decreto legge 4 ottobre 2018, n.113, coordinato con la Legge di conversione 4 dicembre 2018, n.132.			2018	2018

Regulations, standards, guidelines	Name			Year Published	
	Regolamento Recante "Criteri per l'Organizzazione e la Gestione dei Centri di Identificazione ed Espulsione Previsti dall'Articolo 14 del Decreto Legislativo 25 Luglio 1998 n. 286 e successive modificazioni" (Regulations on the "criteria for the organization and management of the centers for identification and expulsion")			2014	
	Roadmap Italiana (Italian Roadmap)			2015	
	Standard Operating Procedures (SOPs) applicable to Italian Hotspots			2015	
Grounds for administrative immigration-related detention					
Immigration-status-related grounds	Name			Observation Date	
	Detention to prevent unauthorised entry at the border			2019	
	Detention to establish/verify identity and nationality			2019	
	Detention to prevent absconding			2019	
	Detention for failing to respect non-custodial measures			2019	
	Detention for failing to respect a voluntary removal order			2019	
	Detention during the asylum process			2019	
Detention to effect removal			2019		
Criminalization of immigration-related offences					
Does the country provide specific criminal penalties for immigration-related violations?	Fines	Incarceration	Observation Date		
	Yes	Yes	2019		
Grounds for criminal immigration-related detention/incarceration and maximum potential duration of incarceration	Grounds for Incarceration	Maximum Number of Days of Incarceration		Observation Date	
	Unauthorised stay	365		2019	
	Unauthorized re-entry	1460		2019	
Length of detention					
Maximum length for administrative immigration detention in law.	Number of Days		Observation Date		
	180		2018		
Maximum length of time in custody prior to issuance of a detention order	Number of Days		Observation Date		
	2		2017		
Average length of detention	Number of Days		Observation Date		
	25.5		2015		
Maximum length of detention for asylum-seekers	Number of Days		Observation Date		
	365		2017		
Procedural standards					
Provision of basic procedural standards	Name		In Law	In Practice	Observation Date
	Right to appeal the lawfulness of detention		Yes		2017
	Right to legal counsel		Yes		2017
	Information to detainees		Yes		2017
	Independent review of detention		Yes		2017
	Access to asylum procedures		Yes		2017

Non-custodial measures (alternatives to detention)				
Types of non-custodial measures	Name	In Law	In Practice	Observation Date
	Supervised release and/or reporting	Yes	infrequently	2017
	Registration (deposit of documents)	Yes	infrequently	2017
	Designated non-secure housing	Yes	infrequently	2017
	Electronic monitoring	No	No	2017
Vulnerable persons				
Is the detention of vulnerable persons provided in law? Are they detained in practice?	Name	In Law	In Practice	Observation Date
	Unaccompanied minors	Prohibited	Not available	2017
	Asylum seekers	Provided	No	2017
	Pregnant women	Prohibited	Not available	2017
	Accompanied minors	Not mentioned	Not available	2017
Expedited removal and re-entry ban				
Re-entry ban	Name		Observation Date	
	Yes		2017	
INTERNATIONAL LAW				
Relevant international treaties and date of ratification				
International treaties	Name			Ratification Year
	ICPED, International Convention for the Protection of All Persons from Enforced Disappearance			2015
	OPCAT, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			2013
	OP ICESCR, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights			2015
	ICCPR, International Covenant on Civil and Political Rights			1978
	ICESCR, International Covenant on Economic, Social and Cultural Rights			1978
	ICERD, International Convention on the Elimination of All Forms of Racial Discrimination			1976
	CEDAW, Convention on the Elimination of All Forms of Discrimination against Women			1985
	CAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment			1989
	CRC, Convention on the Rights of the Child			1991
	CRPD, Convention on the Rights of Persons with Disabilities			2009
	CRSR, Geneva Convention Relating to the Status of Refugees			1954
	PCRSR, Protocol to the Geneva Convention Relating to the Status of Refugees			1972
	CRSSP, Convention Relating to the Status of Stateless Persons			1962
	CTOCTP, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children			2006
	CTOCSP, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime			2006
	VCCR, Vienna Convention on Consular Relations			1969
	OP CRC Communications Procedure			2012
Ratio of relevant international treaties ratified				17/19

International treaty reservations	Name	Reservation Year	Observation Date	
	VC Article 36	1969	2019	
Individual complaints procedure	Name		Acceptance Year	
	ICCPR, First Optional Protocol to the International Covenant on Civil and Political Rights, 1966		1978	
	ICERD, declaration under article 14 of the Convention		1976	
	CEDAW, Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999		1985	
	CAT, declaration under article 22 of the Convention		1989	
	CRPD, Optional Protocol to o the Convention on the Rights of Persons with Disabilities		2009	
Ratio of complaints procedures accepted	Number		Observation Date	
	5		2019	
	5		2019	
Regional treaties, regulations, and directives				
Regional legal instruments	Name		Year of Ratification (Treaty) / Transposed (Directive) / Adoption (Regulation)	
	ECHR, Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)		1955	
	ECHRP7, Protocol 7 to the European Convention on Human Rights (amended by protocol 11)		1991	
	ECHRP1, Protocol 1 to the European Convention on Human Rights (amended by protocol 11)		1955	
	ECPT, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment		1988	
	CATHB, Convention on Action against Trafficking in Human Beings		2010	
	Reception Directive		2005	
	Procedures Directive		2008	
	Return Directive		2011	
	CPCSE, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse		2013	
Regional treaty reservations	Name		Reservation Year	
	ECHRP7 Article 2		1991	
	ECHRP7 Article 3		1991	
Non treaty-based international human rights mechanisms				
Visits by special procedures of the Human Rights Council	Name		Year of Visit	Observation Date
	Special Rapporteur on trafficking in persons, especially in women and children		2013	2019
	Special Rapporteur on the human rights of migrants		2012	2019
	Special Rapporteur on violence against women, its causes and consequences		2012	2019
	Working Group on arbitrary detention		2008	2019
	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance		2006	2019
	Special Rapporteur on the human rights of migrants		2004	2019
	Working Group on arbitrary detention		2014	2019

Relevant recommendations of the UN Universal Periodic Review	Recommendation Issued					Year Issued				Observation Date					
	Yes					2010				2019					
	Yes					2014				2019					
INSTITUTIONAL INDICATORS															
Governing structures															
Federal or centralized governing system	Federal or centralized governing system										Observation Date				
	Centralized system										2019				
Centralized or decentralized immigration authority	Centralized or decentralized immigration authority									Observation Date					
	Centralized immigration authority									2019					
Institutions responsible for immigration detention															
Custodial authority	Agency					Ministry			Ministry Typology			Observation Date			
	Dipartimento per le libertà civili e l'immigrazione / Direzione Centrale dei Servizi Civili per L'immigrazione e L'asilo					Ministero dell'Interno			Interior or Home Affairs			2019			
Detention Facility Management	Entity Name										Entity Type		Observation Date		
	Bari Palese: Badia Grande; Brindisi Restinco: San Filippo Neri (former Auxilium); Caltanissetta: San Filippo Neri (former Auxilium); Palazzo S. Gervasio: Engels Italia srl; Ponte Galeria: Albatros (former GEPSA); Torino: Gepso - Aquarinto; Trapani: Badia Grande												2019		
Types of detention facilities used in practice	Immigration detention centre (Administrative)	Immigration field office (Administrative)	Transit centre (Administrative)	Reception centre (Administrative)	Offshore detention centre (Administrative)	Hospital (Administrative)	Border guard (Administrative)	Police station (Criminal)	National penitentiary (Criminal)	Local prison (Criminal)	Juvenile detention centre (Criminal)	Informal camp (Ad hoc)	Immigration detention centre (Ad hoc)	Surge facility (Ad hoc)	Observation Date
	Yes														2019
Detention monitoring institutions															
Authorized monitoring institutions	Institution						Institution Type						Observation Date		
	National Guarantor of rights of people detained or deprived of their liberty						OPCAT National Preventive Mechanism (NPM)						2019		
Is the national human rights institution (NHRI) recognized as independent?	Is the NHRI recognized as independent by the International Coordinating Committee of National Human Rights Institutions?												Observation Date		
	Yes												2019		
Does NHRI carry out visits?	Does NHRI carry out visits in practice?									Observation Date					
	Yes									2019					
Does NHRI publicly release reports on immigration detention?	Does NHRI publicly release reports on immigration detention?										Observation Date				
	Yes										2019				
Does national preventive mechanism (NPM) carry out visits?	Does NPM carry out visits in practice?									Observation Date					
	Yes									2017					
Does NPM publicly release reports on immigration detention?	Does NPM publicly release reports on immigration detention?										Observation Date				
	Yes										2019				
Do NGOs carry out visits?	Do NGOs regularly carry our visits?								Observation Date						
	Yes								2019						
Do NGOs publish reports on immigration detention?	Do NGOs publish reports on immigration detention?										Observation Date				
	Yes										2019				

Do parliamentary organs carry out visits?	Do parliamentary organs carry out visits?	Observation Date
	Yes	2019
Do parliamentary organs have capacity to receive complaints?	Do parliamentary organs have capacity to receive complaints?	Observation Date
	Yes	2019
Do parliamentary organs publicly report on their detention findings?	Do parliamentary organs publicly report on their detention findings?	Observation Date
	Yes	2019
Expenditures		
Estimated cost per detainees day (in USD)	Estimated cost per detainees day (in USD)	Observation Date
	55	2011

More information about immigration detention in Italy is available at the website of the Global Detention Project (www.globaldetentionproject.org)

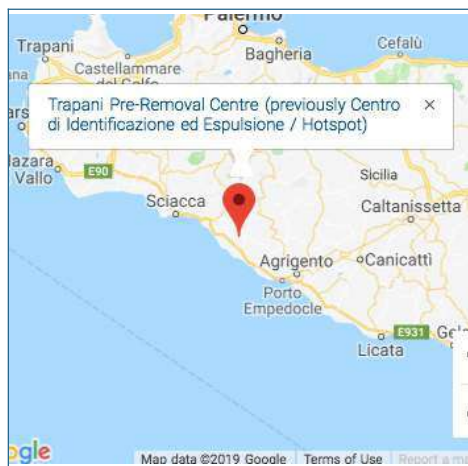
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Italy Detention Centre Data Profile



Trapani Pre-Removal Centre (previously Centro di Identificazione ed Espulsione / Hotspot)

Global Detention Project profile produced in partnership with Italian Refugee Council and Red Line Project



General Information

STATUS	In use
FACILITY TYPOLOGY	Administrative - Immigration detention centre
DETAINEE CAPACITY	400
LOCATION (CITY & REGION)	Trapani, Milo, Sicily, Europe

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/italy/detention-centres/1372/trapani-pre-removal-centre-previously-centro-di-identificazione-ed-espulsione-hotspot>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Trapani Milo Hotspot (Photo Credit: http://static2.blastingnews.com/media/photogallery/2016/9/1/290x290/b_290x290/veduta-dell-hotspot-di-tra-pani-in-contrada-milo_848929.jpg)

GENERAL CHARACTERISTICS

Status				
Center status	Status	Observation date		
	In use	2019		
Typology				
GDP facility typology	Category Filter	Type	Observation date	
	Administrative	Immigration detention centre	2019	
National typology	Name		Observation date	
	Pre Removal Centre (Centro di Permanenza per il Rimpatrio - CPR)		2019	
Operating Period				
Operating period	Year of Entry		Year Ceased	
	2019		Unknown	
OPERATIONAL CHARACTERISTICS				
Management and Services				
Management	Name		Type	Observation date
	Prefettura - Ufficio territoriale del Governo di Trapani		Government-local	2018
Outsourced services and non-state actors	Provider	Service	Observation date	
	Cooperativa Sociale Badia Grande	Management	2017	
Security				
Security Regime	Security Level		Observation date	
	Secure		2016	
Detention timeframe				
Maximum official detention period at facility	Length		Observation date	
	Long-term (more than 20 days)		2012	
Estimated average detention period (days)	Number of Days		Observation date	
	6		2018	
Categories of detainees				
Categories of detainees	Name		Observation date	
	Undocumented migrants (administrative)		2019	
	Asylum seekers (administrative)		2019	
Size and population				
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date	
	Standard capacity	400	2018	
Total number of detainees (year)	Number	Observation date		
	9247	2017		
Reported population at a specific time	Number	Observation date		
	5	2017		
Conditions				
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions		Observation date
	Inadequate	Freedom of movement within facility		2017

Italy Detention Centre Data Profile



Lampedusa (Contrada Imbriacola) Hotspot

Global Detention Project profile produced in partnership with Italian Refugee Council and Red Line Project



THE RED LINE PROJECT
A project led by the Hungarian Helsinki Committee and funded by EFMD



General Information

STATUS	In use
FACILITY TYPOLOGY	Administrative - Secure reception centre
DETAINEE CAPACITY	96
LOCATION (CITY & REGION)	Lampedusa, Agrigento, Sicily, Europe
CONTACT INFORMATION	Lampedusa, Italy

NOTES ON USING THIS PROFILE

- Sources for the data provided in this report are available online at: <https://www.globaldetentionproject.org/countries/europe/italy/detention-centres/2028/lampedusa-contrada-imbriacola-hotspot>
- "Observation Dates" indicate the timeframe statistical data correspond to or other data were last validated. More than one statistical entry for a year indicates contrasting reports.



Lampedusa Hotspot (Photo Credit: Internazionale;
<http://media.internazionale.it/images/2015/03/24/107479-md.jpg>)

GENERAL CHARACTERISTICS

Status				
Center status	Status		Observation date	
	In use		2019	
Typology				
GDP facility typology	Category Filter	Type	Observation date	
	Administrative	Secure reception centre	2019	
National typology	Name		Observation date	
	Hotspot		2019	
Operating Period				
Operating period	Year of Entry		Year Ceased	
	2015			
OPERATIONAL CHARACTERISTICS				
Management and Services				
Management	Name		Type	Observation date
	Ministry of the Interior		Governmental	2016
	European Union Agencies (Frontex and EASO)		International or Regional Organization	2016
Outsourced services and non-state actors	Provider	Service	Observation date	
	Unknown	Management	2018	
Security				
Security Regime	Security Level		Observation date	
	Secure		2016	
Detention timeframe				
Estimated average detention period (days)	Number of Days		Observation date	
	13		2018	
Categories of detainees				
Categories of detainees	Name			Observation date
	Undocumented migrants (administrative)			2019
	Asylum seekers (administrative)			2019
Segregation				
Gender segregation	Gender Segregation			Observation date
	Yes			2016
Family segregation	Family Segregation			Observation date
	Yes			2016
Age segregation	Age Segregation			Observation date
	Yes			2016
Size and population				
Estimated capacity (administrative immigration detention facility)	Type	Capacity	Observation date	
	Standard capacity	96	2018	

Total number of detainees (year)	Number	Observation date	
	8940	2017	
Reported population at a specific time	Number	Observation date	
	272	2017	
Conditions			
Reports of adequate or inadequate conditions	Adequate or Inadequate?	Detention centre conditions	Observation date
	Inadequate	Bedding and clothing	2018
Deaths			
Reported deaths at this facility	Reported deaths?		Observation date
	Yes		2018
Reports of attempted or successful suicides at this facility	Suicides Reported		Observation date
	Yes		2018

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