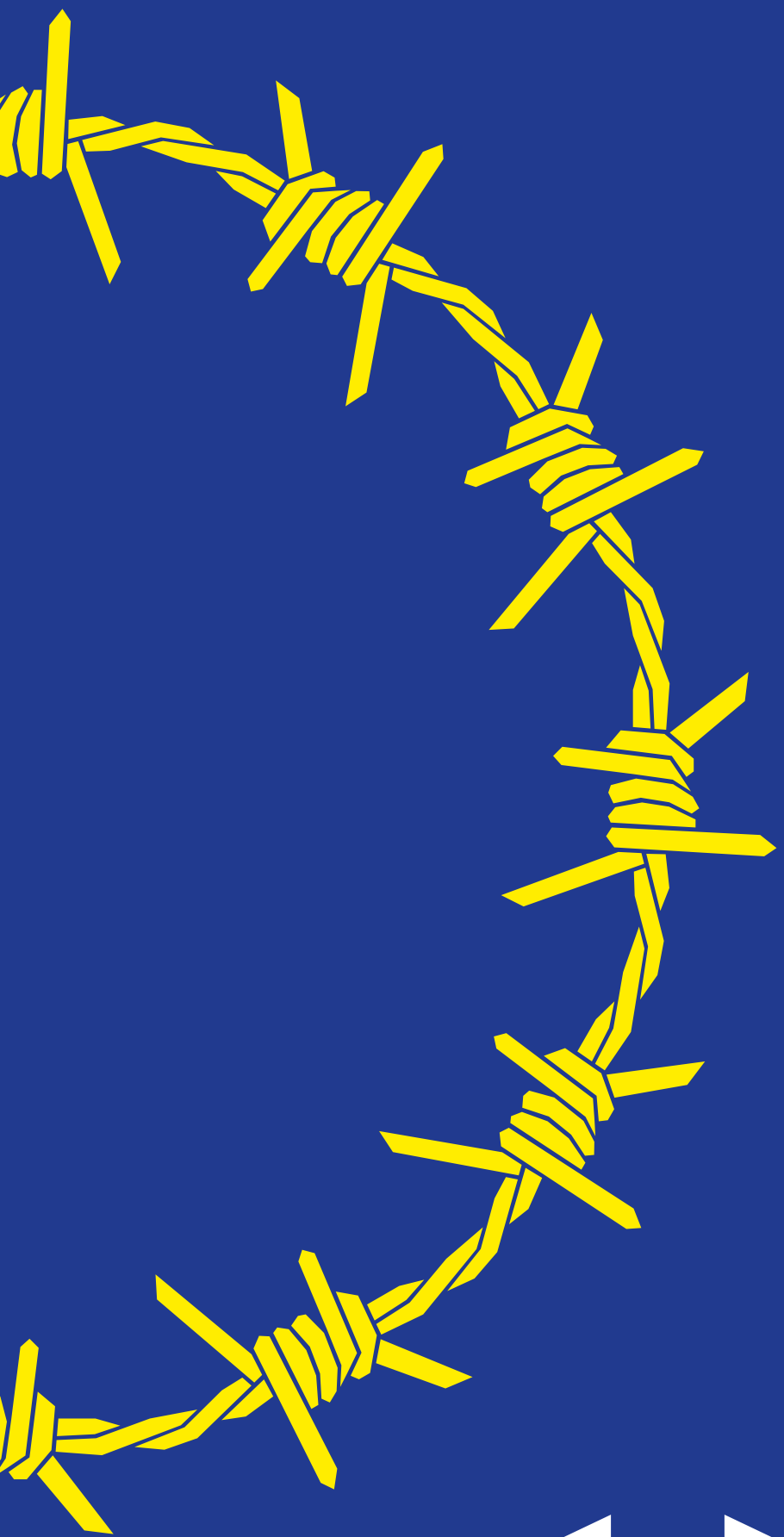
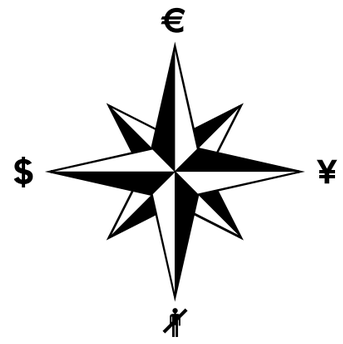


THE HIDDEN FACE OF IMMIGRATION DETENTION CAMPS IN EUROPE

OPEN ACCESS NOW

TO DETENTION CENTRES FOR MIGRANTS



INTRODUCTION

Since the 1990s, detention has become one of the main tools to manage migrant populations in Europe and beyond. The only reason for such deprivation of liberty is the failure to comply with – generally unjust – rules on border crossing and/or stay. Detention is a permanent source of violation of migrants' rights. Behind the stated aim of streamlining the management of migratory flows, the institutionalisation of migrant detention leads to the criminalisation of those considered undesirable, thereby fuelling racism and xenophobia[1].

In this context and within the framework of the campaign "Open Access Now", this publication aims to shed light on the reality of migrant detention in the area of "freedom, security and justice" which the European Union (EU) claims to be and to provide a tool for citizens to look beyond the often false or incomplete representation given in the news and institutional statements.

The situation is analysed in the light of principles laid down in international and regional treaties on the protection of human rights and fundamental freedoms[2], but also the European directives governing the detention of migrants[3].

One of the main findings is a marked tendency to restrict (and sometimes to deny) human rights and fundamental freedoms of detained migrants.

Without approving the purpose or aim of the above-mentioned European directives, the study also identifies gaps between principles laid down in these instruments and the practices in migrant detention camps and, too often, the failure to respect the few provisions likely to be to the benefit of migrants.

For these reasons, we considered that it was important to publicise the findings and analyses produced by civil society organisations which have been campaigning against migrant detention for over ten years. These findings show that these processes to deprive migrants of their liberty not only result in increasing human and financial costs but are also ineffective in achieving their aims.

This publication is organised into five sections: who are the detainees (1. WHO DO WE DETAIN?), stated and real reasons for detention (2. WHY DETENTION?), places where deprivation of liberty takes places (3. WHERE TO DETAIN?), how does it take place (4. HOW TO DETAIN?), as well as the existing forms of democratic scrutiny (5. WHAT DEMOCRATIC SCRUTINY OVER DETENTION?).

For each section, we have attempted as far as possible to illustrate the reality of detention through photos, testimonies, maps as well as figures and key examples.

This publication aims at facilitating public access to information on the detention of migrants in Europe. This tool is also intended for the use of activists, researchers, journalists, teachers and anyone who wants to inform, raise awareness on and fight against the exclusion of migrants, as well as European Members of Parliament ready to engage in the promotion of progressive legal reforms in this field.

1
Migreurop, "Enfermement des migrants, le 'mode de gestion privilégié' des migrations" ("Detention of migrants: the preferred instrument for the management of migrations"), 2013.

2
In particular, the European Convention on Human Rights (1950) and the Charter of Fundamental Rights of the European Union (2000) or the International Convention on the Rights of the Child (1989).

3
In particular, 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 (EC/115/2008) (the "Return" Directive) and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("Reception Conditions" Directive).

Camp of Vienna (Greece), March 2009.
© Sara Prestianni

The campaign "Open Access Now" was launched in 2011 by the networks Migreurop and European Alternatives. It is run by the following NGOs: Coordination et initatives pour réfugiés et étrangers (CIRE), League for Human Rights (Belgium), Sos Racismo (Spain), Anafé and La Cimade (France), Arci (Italy) and Frontiers Ruwad (Lebanon). "Open Access Now" calls for unconditional access for civil society and the media to migrant camps, while such places continue to exist. It also demands total transparency on the status and all data concerning the operation of these detention sites, in the name of the right to information of citizens and the right to freedom of expression of detainees.

For more information: www.openaccessnow.eu

1 WHO DO WE DETAIN?

1A Migrants deprived of their liberty: who are they?

Each year, close to 600,000 migrants are deprived of their liberty on the European Union (EU)'s territory for "migratory management" purposes. They are women, men and children detained on the sole ground that they have failed to comply with rules on entry and stay, pending deportation.

They can include anybody found to be in an irregular situation on the territory of an EU Member State who poses "flight risks" (a concept defined very broadly in EU law): asylum seekers and those whose application for protection has been rejected, migrants whose right to remain has expired or who have never enjoyed that right, who sometimes have been on the territory for many years. They can be workers, students, EU citizens, the spouses or parents of EU citizens, sick persons, unaccompanied minors, victims of torture or trafficking, stateless persons, etc.

They may also be people who have been denied access to the EU's territory at the border. These people are often "contained" in waiting zones in international airports, ports and stations, before being sent back within hours or days following their arrival, sometimes in an expeditious manner, in particular when the deportation measure takes place within the framework of bilateral agreements.

A significant number of those detained are the subject of "readmission" procedures towards another EU Member State where they hold a right of residence.

Numerous migrants are detained – sometimes for long periods of time – despite the fact that, for various reasons, their removal is not possible.

Camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni

1B The best interests of the child and family life in detention

Despite the fact that *"in all actions concerning children* [...], *the best interests of the child should be a primary consideration"*, Member States detain minors, both those who are unaccompanied and children with their parents.

This practice represents a clear violation of the principles of family unity and of the best interests of the child, provided for in the European Convention on Human Rights, the EU Charter of Fundamental Rights and the International Convention on the Rights of the Child[1].

The EU "Return" Directive is ambiguous towards children and families: it refers to these principles[2] but it fails to explicitly prohibit the detention of minors. This failure imposes a heavy toll on migrant families...

In France, despite a recent condemnation by the European Court of Human Rights (ECtHR) for the detention of a family with minor children[3] and instructions issued to the administrative services calling on them to limit the detention of families, children are still detained in administrative holding centres and facilities (*Centres et locaux de rétention administrative* – CRA and LRA). In Mayotte, a French Overseas Department, the situation is alarming: at least 2,575 minors were detained in 2012. According to associations operating in French CRA, approximately a dozen families, including 19 children, were detained during the first four months of 2014.

In Cyprus, where national law authorises the detention of unaccompanied minors and families, unaccompanied children are very often placed in detention following their arrest. Detention of children with adults is a serious concern. In Paphos police station, this promiscuity leads the younger ones to remain in their cells or go to the women's courtyard when the latter, who have access to it only two hours daily, are absent. In Greece, the Amygdaleza camp is specifically dedicated to the detention of unaccompanied minors[4]. In the Czech Republic, the law authorises the detention of minors aged over 15 years[5].

It is also important to highlight the frequent detention of fathers and mothers of families, while the rest of the family remains free. The disruption of the family unit can be for long periods: first during detention, then sometimes as a result of the deportation of a family member and the impossibility for the rest of the family who remains in Europe to join the deported parent in the country of origin.

1
European Convention on Human Rights, Art. 8; Charter of Fundamental Rights of the European Union, Art. 7; International Convention on the Rights of the Child, Art. 3§1 and 3§2, 22 and 37.
2
"Return" Directive (EC/115/2008), Articles 5, 14 (a) and (c) and 17.
3
ECtHR, Popov v. France, 19 January 2012.
4
"Detention Context Forms", Europe regional workshop, International Detention Coalition, (Brussels, 27-28 May 2014), information provided by participating NGOs.
5
Ibidem

Migrant encampment in Patras (Greece) destroyed by the police in July 2009, March 2009. © Sara Prestianni

Families detained in a detention centre in Europe (2011).

1C European citizens: freedom of movement in jeopardy

Sometimes European nationals are among the majority of those in EU detention facilities.

One of the EU's fundamental principles is the freedom of movement of European citizens within the Union's territory as well as their freedom of residence. Although this freedom applies to a 3-month period, this pillar of the EU construction is undermined by the regular detention of European nationals. While the "Return" Directive, which only applies to nationals from so-called third countries, does not provide for the detention of European nationals, it also fails to prohibit it. As a result, Member States can provide for a different – and therefore looser – legal framework for such populations.

In France, the detention of nationals from Romania and Bulgaria has continued to increase since these two countries became EU members in 2007: four times more Romanian nationals were detained in 2012 compared to 2008[1].

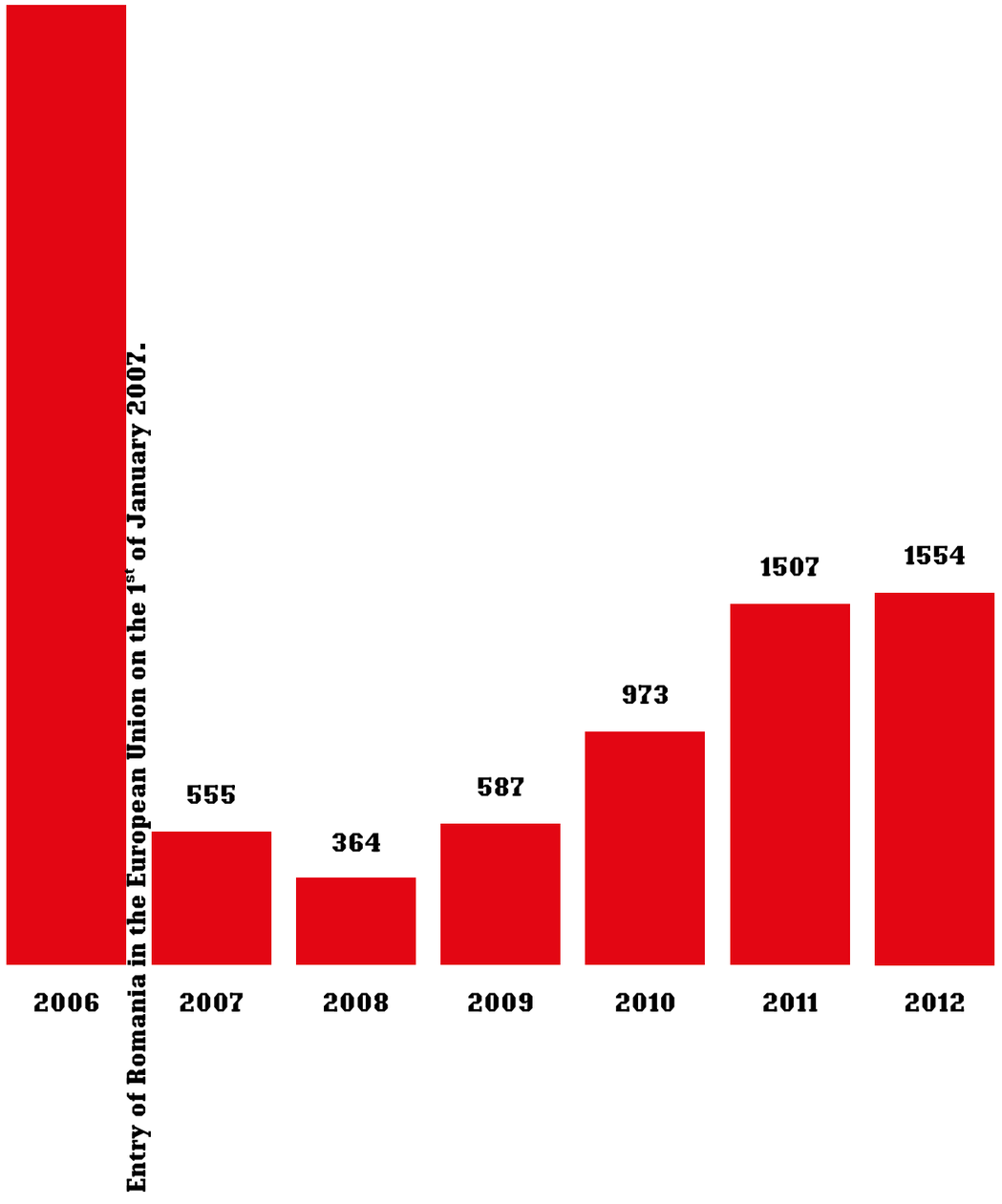
In 2011, in Italy, Romanians were the third most represented nationality in migrant camps[2]. Italian law authorises the detention of EU citizens only in exceptional circumstances when their stay on the territory is "incompatible with civil and secure coexistence". Detention cannot exceed 96 hours. However, many Romanian nationals are detained in these centres in contravention of these provisions, sometimes for more than 4 days.

Deportation and a fortiori detention procedures for European nationals within the EU are not in line with European law and are contrary to one of the EU's founding principles, the free movement of citizens from EU Member States across the entire territory.

1.
ASSFAM, La Cimade, Forum réfugiés, France terre d'asile, Ordre de Malte, "Rapport sur les centres de rétention administrative (CRA)" ("Report on administrative detention centres"), 2012 (available in French only).
2
Medici per i diritti umani (MEDU), Arcipelago CIE, 2013 (available in Italian only).

Camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni

EVOLUTION OF THE DETENTION OF ROMANIAN (EU CITIZENS SINCE 2007)



Source : ASSFAM, La Cimade, Forum réfugiés, France terre d'asile, Order of Malta, "Rapport sur les centres de rétention administrative (CRA)" ("Report on administrative detention centres"), 2012, p. 12 (available in French only)

1D Asylum in detention

The detention of asylum seekers is a common practice within the EU and is even systematic in some Member States. In many instances, it has been shown to clearly undermine the right of access to international protection.

Recently adopted EU legislation explicitly authorises the detention of asylum seekers, *"when it proves necessary and on the basis of an individual assessment of each case"*, and *"if other less coercive alternative measures cannot be applied effectively"*[1]. This reinforces the climate of suspicion towards asylum seekers.

In 2013, Hungary adopted a law which provides for the detention of asylum seekers. On this basis, 1,762 asylum seekers were detained between July 2013 and March 2014[2]. In Bulgaria, a bill introducing the systematic detention of asylum seekers in specifically designed camps is under discussion before Parliament. In the meantime, half of those detained in the Busmantzi and Lubimets deportation centres are asylum seekers, in particular Syrian nationals[3].

In Cyprus, those who successfully register asylum applications are detained if they do not hold valid papers and are kept in detention for several days or weeks. In Malta, asylum seekers who do not hold valid papers – which represents the majority of arrivals – are systematically detained.

In the Czech Republic, asylum seekers are detained "with the obligation to stay" in detention centres for migrants for a maximum duration of 120 days[4]. The Slovak Republic also organises the detention of asylum seekers, in particular in waiting zones located in airports and in detention centres for migrants[5].

In France, despite a condemnation by the ECtHR[6] on the absence of an effective remedy for those forced to apply for entry for asylum purposes under an emergency procedure, the French authorities continue to detain and deport applicants during appeal proceedings before the National Court of Asylum.

In border areas such as international airports, many people seeking protection are detained upon their arrival on EU territory. Their situation is generally examined expeditiously, access to legal advice (association, lawyer) is very limited if not impossible. This is the case in Belgium, where asylum seekers at the border are automatically detained while their application is being examined. In France, several thousand people are detained at the border in waiting zones without any possibility of filing an asylum application. Although an exceptional procedure has been established, it is only an application for entry for asylum purposes, the objective of which is not to examine the merits of the application but only to decide whether or not to allow asylum seekers to enter the territory to continue the process of applying for asylum. These people are therefore threatened with deportation even before their application has been filed and examined by a competent body.

Finally, everywhere in the EU, asylum seekers are detained before being sent back to the Member State through which they entered EU territory, which, pursuant to the Dublin III Regulation, is responsible for their asylum application.

1
Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), art. 8§2.
2
"Detention Context Forms", Europe regional workshop, International Detention Coalition, (Brussels, 27-28 May 2014), information provided by participating NGOs.
3
Bulgarian Helsinki Committee, report on the visit of Busmantzi and Lubimets detention centres carried out in August and September 2013.
4
"Detention Context Forms", Europe regional workshop, International Detention Coalition, (Brussels, 27-28 May 2014), information provided by participating NGOs.
5
Ibidem.
6
ECtHR, I.M. v. France, 2 February 2012 (available in French only).

Migrants waiting to apply for asylum, Athens (Greece), March 2009.
© Sara Prestianni

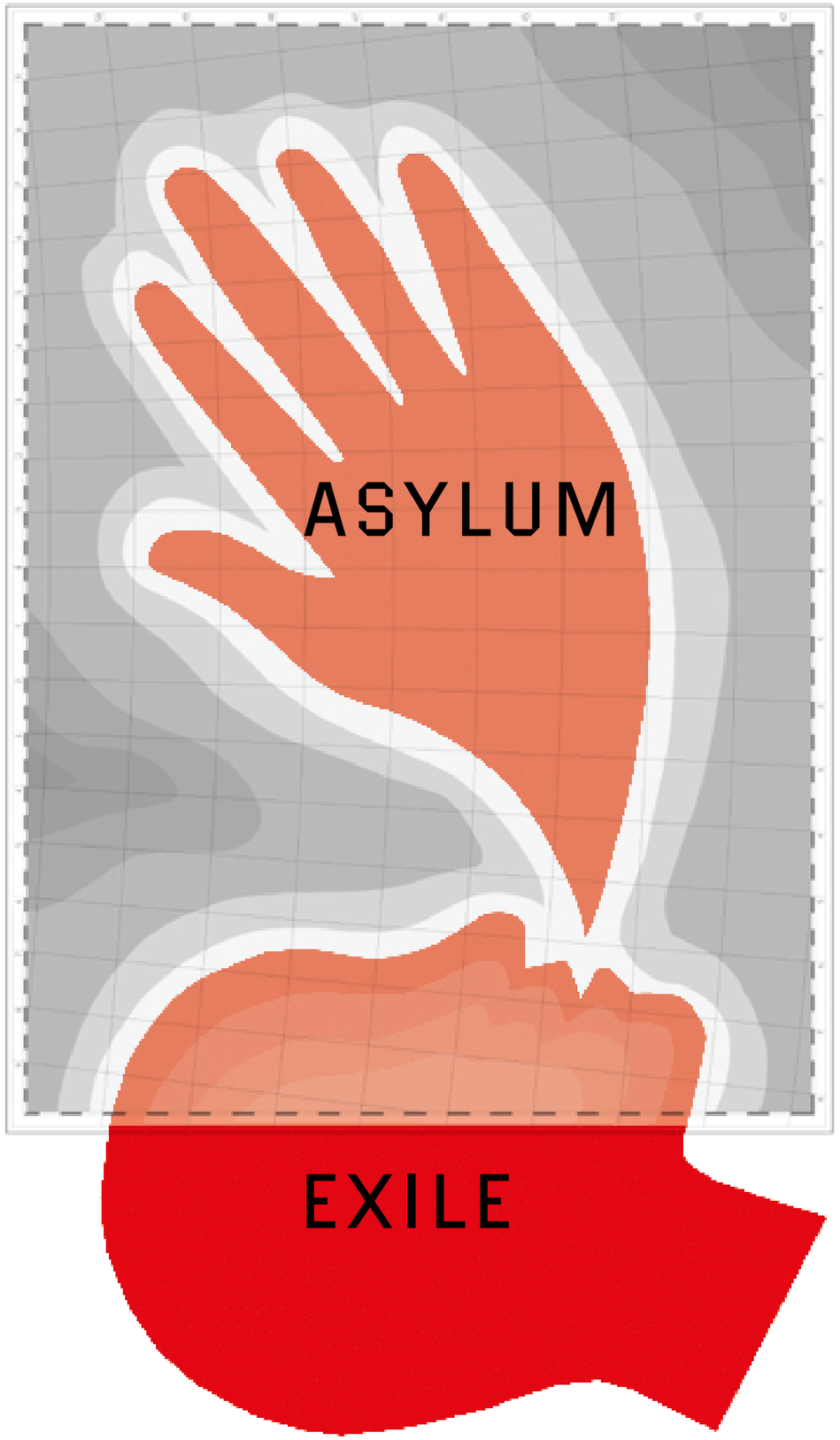


Image Boris Séméniako

1E Detention of sick migrants

A large number of cases of sick migrants have been recorded in European detention facilities. This trend should be analysed in the context of the adoption of laws restricting access to stay on medical grounds, according to which the deportation of migrants takes precedence over the right to health.

Their detention poses serious problems given the difficulty of accessing health services in the majority of detention facilities, all the more so in the case of serious diseases.

Various bodies have looked at the issue of access to healthcare in migrant detention centres. In June 2009, the Council of Europe Commissioner for Human Rights[1] expressed concern over the absence of health monitoring and difficulties accessing specialist care in closed centres in Belgium. He urged Belgian authorities to guarantee access to good quality health care comparable to those available outside detention centres. The ECtHR also condemned Belgium for detaining a woman infected with HIV, without adopting *"all reasonable measures to protect the applicant's health and prevent the deterioration of her health condition"* (no official translation)[2].

1
Thomas Hammarberg, "Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19 December 2008", 17 June 2009.
2
ECtHR, Yoh Ekale Mwanje v. Belgium, 20 March 2012 (available in French only).

1F And others...

Beyond these specific categories of detainees, men and women are detained simply because they have exhausted their very limited access to the right to remain or are considered "persona non grata" when they arrive at the EU's door. The detention of these individuals and related violations of their fundamental rights are of equal concern and deserve the same level of attention of both civil society and political representatives.

Migrant encampment in the Spanish enclave of Melilla, March 2012.
© Sara Prestianni

Martine Samba, a 34-year-old Congolese woman living with HIV, was detained in the Temporary Stay Immigrants Centre (CETI) in Melilla before being transferred on 11 October 2011 to the Immigrant Detention Centre (CIE) in Aluche (Madrid). On ten occasions, she requested medical assistance, as shown in the records of the relevant services. In vain. She did not speak Spanish and did not have access to an interpreter. Despite her serious health condition, no analysis was undertaken.

Martine Samba died on 19 December 2011, after 38 days in detention in the CIE in Aluche.

In August 2012, complaints filed by Martine Samba's mother, Clementine, and the NGOs Sos Racismo Madrid, Ferrocarril Clandestino and Asociación de Letrados por un Turno de Oficio Digno (ALTODO) were dismissed by the prosecutor. In January 2014, after the complainants appealed, the investigation was re-opened.

2 WHY DETENTION?

2A Legal grounds for the detention of migrants

Since the 1990s, EU Member States have been developing a range of legal, administrative and political tools to "host", filter and reject migrants. Within the framework of this system, detention, presented as a tool to rationalise the management of immigration, is central.

According to European laws, Member States can use detention, to arrange the removal or return of:

- → migrants present on EU territory, without a residency permit. Pursuant to the EU "Return" Directive [1]
- → migrants present at the EU (land, airport or other) borders, who do not fulfil the conditions required for entry to the territory. Under the Schengen Borders Code [2]
- → asylum seekers, while their application is being processed, in some cases. Pursuant to the EU "Reception Conditions" Directive [3].

These texts have institutionalised administrative detention and made its use by EU Member States commonplace.

Conditions to be met before ordering detention are to be defined under domestic law. This means that conditions for entry to and stay on the territory still fall within the competence of Member States.

Domestic laws regulating admission to the territory are all characterised by the limited legal channels for migration (restrictive visa policies) and, in some cases, by the criminalisation of irregular entry. With the exception of the right of family members to join their migrant relations lawfully residing in a Member State (family reunification), the right to residence is generally subject to the holding of an employment contract.

As a consequence the following circumstances are likely to result in detention:

- → coming to Europe without papers and/or visa and making an asylum application at the border;
- → coming to Europe with a tourist visa and being held at the border for the failure to provide the required documents or show sufficient resources;
- → entering as a tourist and staying after the expiry of the visa;
- → losing one's job and being deprived of the right to renew a residence permit;
- → failing to gather all the documentation required to get a residence permit or its renewal;
- → failing to move from one visa category (for example a student visa) to another (for example a work visa);
- → applying for asylum and being denied protection.

So-called "administrative" detention of migrants is officially intended to organise the deportation of those who fail to comply with rules on stay and the removal of those whose applications to enter the territory have been rejected.

Behind the legal grounds for detention, unofficial and equally obvious reasons for detention can be identified, both in practice and in the social imagination. The policy of imprisoning migrants enables those labelled undesirable to be excluded and punished. In societies experiencing economic and social crises, seeking to identify those responsible for the problems and challenges they face, the manufacture of irregular status is presented as a response to the problems faced by European citizens.

Camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni

To prepare removal:

[1] "Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process... Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence."

"RETURN" DIRECTIVE (EC/115/2008), ART. 15§1.

The Schengen Borders Code does not explicitly provide for detention but permits it:

"The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned."

SCHENGEN BORDERS CODE (REGULATION (EC) N. 562/2006), ART. 13§4.

Thus, according to the "Return" Directive:

[2] "Member States may decide not to apply this Directive to third-country nationals who: are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State."

"RETURN" DIRECTIVE (EC/115/2008), ART. 2§2 (A).

However, Member States can also decide that the Directive does apply. In both cases, detention on entry to the territory is possible.

[3] "When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant [for asylum], if other less coercive alternative measures cannot be applied effectively."

"RECEPTION CONDITIONS" DIRECTIVE (2013/33/EU), ART. 8§2.

2B A policy with high human and financial costs

The first issue related to the relevance of this policy of imprisoning migrants is its cost. Although the proportion dedicated to detention is not specified, the global amount of funds provided by the EU to Member States to manage returns reached 674 million Euros between 2008 and 2013[1]. This figure does not include the amounts spent by each State from national funds.

Italy provides a good illustration: the Lunaria association carried out an investigation[2] into Italian public expenditures related to the fight against "irregular immigration". Between 2005 and 2011, the State spent one billion Euros on the detention of migrants[3]. According to official figures available, a large part of these costs relate to Identification and Deportation Centres (CIE).

The use of these funds often results in breaches of fundamental rights and encourages inhuman and degrading treatment.

In parallel to the increase in the budget allocated to detention, public expenditure related to the reception of migrants has decreased (see below against). The Italian Government has prioritised policies aimed at imprisoning migrants over policies of "reception and social integration". In other European countries, such as Belgium, the budget allocated to the reception of asylum seekers has decreased while that allocated to the removal of migrants has significantly increased.

1 Communication from the Commission to the Council and the European Parliament on EU Return Policy, COM(2014) 199 final, p. 4.
2 Lunaria, "Costi disumani. La spesa pubblica per il 'contrasto dell'immigrazione irregolare'", 2013 (a summary in English is available).
3 *Ibidem*, p. 60.

Construction of a new camp with a capacity of 600 places in Edirne (Turkey), May 2011. © Sara Prestianni

Immigration : cost of the reception vs cost of the repression

The example of Italy
Public funds invested between 2005 and 2011:

→ **"Reception and social integration policies" (all measures): 123 871 438 € on average per year**

→ **"Policies on fighting illegal immigration" (all measures): 247 062 969 € on average per year**

→ **Of which CIE and other migrant detention centres: 144 852 599 € on average per year**

Source : Lunaria, "Costi disumani. La spesa pubblica per il 'contrasto dell'immigrazione irregolare'", 2013

2C Limited "effectiveness"

Migrants detained in the camp of Benghazi (Libya), June 2012.
© Sara Prestianni

A significant proportion of detainees are not deported

Financial investment in this policy appears all the less legitimate in that it does not necessarily lead to deportation… despite the fact that this is supposedly the primary objective of detention.

At the EU level it can be observed that the number of people detained and effectively deported from EU territory is far below the stated goals. According to the statistics gathered by Migreurop, half of those detained are never deported. In 2012, the European Commission (EC) recorded 484,000 orders to "return" and 178,000 migrants who effectively left EU territory[1].

Since the entry into force of the "Return" Directive, increases in the maximum length of detention in several countries has not improved this rate. Migrants are detained for longer periods of time, but there is no increase in the number of deportations[2]. Thousands of people are therefore deprived of their liberty without stated goals of migratory control being reached, while the adverse consequences of detention on human dignity and fundamental rights are glaring.

In Italy, in the last fifteen years, less than one person in two, detained in an administrative detention centre, was deported.

In centres such as that of Mesnil-Amelot (France), the percentage of deportations is close to 26% of the total number of people placed in detention[3], in Trapani Milo (Italy) only 16% of those detained were deported in 2012[4].

Non-removable migrants in camps

"Non-removable" migrants is the term used to describe those who have neither the right to stay in the "reception" country, nor the possibility of returning to their country of origin for reasons beyond their control: administrative barriers, statelessness, risk of human rights violations in the event of return to a "dangerous" country, presence of family or need for medical care in the reception country, or even a combination of such factors.

The practice of detaining "non-removable" migrants is not only useless and absurd, but also unlawful since it can be considered a form of arbitrary detention within the meaning of European Convention on Human Rights (ECHR)[5]. According to the "Return" Directive, *"when it appears that a reasonable prospect of removal no longer exists"*, the person concerned *"shall be released immediately"*[6]. However, there is no binding mechanism to enforce this provision, the "reasonable" character of this prospect of removal being left to the discretion of States. The EC deems it sufficient to recommend recording *"existing best practices at national level, to avoid protracted situations"*[7].

The project "Point of non-return" (see below against) presents portraits of "non-removable" migrants who experienced detention in Belgium, France, Hungary and the United Kingdom.

1 COM(2014) 199 final, p. 4

2 Statement from the unitary trade union of Italian police workers (SIULP) following the increase of the maximum length of detention from 6 to 18 months in June 2011 (available in Italian only).

3 Visit of the Mesnil-Amelot administrative detention centre, 13 May 2013. See: Open Access Now Campaign of parliamentary visits 2013, Country Reports.

4 MEDU, Arcipelago CIE, may 2013.

5 ECtHR, Bouamar v. Belgium, 29 February 1988, Aerts v. Belgium, 30 July 1998, Enhorn v. Sweden, 25 January 2005.

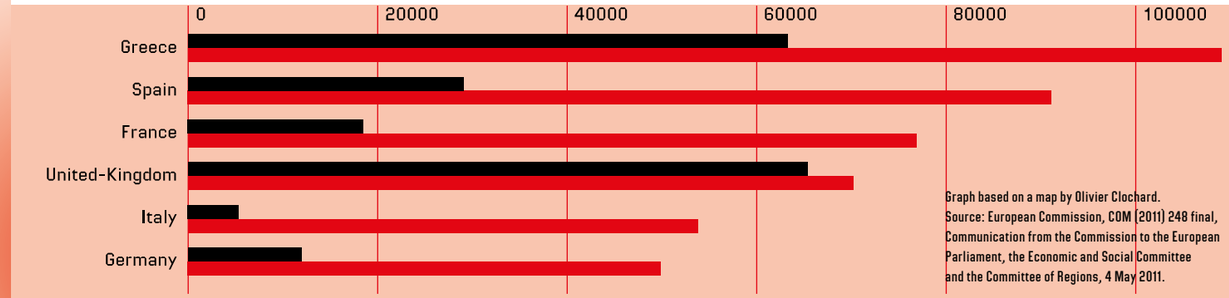
6 "Return" Directive (115/2008/EC), Art. 15§4.

7 EC, COM(2014) 199 final, 28 March 2014, p. 11.

"On the basis of the experience gained by police officers concerning existing bilateral agreements with the various countries of origin of migrants, it is to be observed that when "guests" are not deported in the first 40/50 days, in almost every case they have to be released with an order to leave the territory because it is not possible to carry out removal to their country of origin."

Declaration of the Secretary General of SIULP
(Italian trade union for police officers)
after the extension of the maximum period of detention to 18 months.
(unofficial translation).

"The increase in the length of detention will not have any positive impact on the effectiveness of deportation, but will generate enormous costs."



Graph based on a map by Olivier Clochard.
Source: European Commission, COM (2011) 248 final, Communication from the Commission to the European Parliament, the Economic and Social Committee and the Committee of Regions, 4 May 2011.

LESS THAN HALF THE FOREIGNERS HELD IN ADMINISTRATIVE DETENTION WERE DEPORTED IN 2009

Michael, aged 35, fled Nigeria for religious reasons. He is non-removable because the Hungarian government cannot identify him without documents and the Nigerian authorities do not allow him to return to the territory. He has been detained for 11 months in Hungary.

1978 Born in Zaria, Nigeria.
2002 He requests asylum in Hungary, but is given a one-year residence permit on humanitarian grounds. His residence permit is subsequently extended for a further two years.
2003-2006 He lives in Budapest.
2006 He re-applies to the Hungarian authorities for asylum. He is detained for 5 months.
Then he is transferred to an open reception centre, but due to serious hygiene problems, he leaves – without permission – to live in Budapest with his family.
2007 He lives in Budapest.
2008 He is arrested and detained for five months and twenty days. Then he returns to live in Budapest.
2010 He tries to apply for asylum for the third time. He goes voluntarily to an open migrant accommodation centre for unreturnable or undetainable migrants who have exceeded the maximum period of detention allowed by law.

Twelve years in Hungary, still undocumented and unreturnable for administrative reasons.

Source: "A face to the story: the issue of unreturnable migrants in detention", a project carried out by the NGOs: Flemish Refugee Action (Belgium), Detention Action (United Kingdom), France terre d'asile (France), Menedék – Hungarian Association for Migrants (Hungary) and the European Council on Refugees and Exiles (ECRE), with the support of EPIM, the European Programme on Integration and Migration. pointofnoreturn.eu/en

2D The real objectives of detention

How should we understand the meaning of this policy of detention, in view of its exorbitant costs and its very limited effectiveness? The administrative detention of migrants has never been questioned by EU Governments. Over and above its stated goals it is a powerful political tool. In the southern hemisphere, it supposedly deters potential migrants into the EU. In the northern hemisphere, it is used to give the public the impression of an active fight by the authorities to solve the "problem of immigration", by stigmatising those labelled "enemies". This has the potential to fuel further racism and xenophobia.

Around the so-called "first aid and reception" center of Lampedusa (Italy), February 2011. © Sara Prestianni

Image Sébastien Marchal / Photos Sophie Garcia

2E Criminalise to demonise and increase deportation

Transfer from the harbor of Tenerife to the detention camp, Tenerife (Canary Islands, Spain), March 2007. © Sara Prestianni

The terms "illegal" is regularly used by politicians and the media to describe migrants who, in the absence of legal channels, reach Europe in an "irregular" way.

Terms implying criminality are not used by accident. By defining migrants as a threat, they legitimise unjust laws and practices to the public. Migrants without papers can end up being locked up in camps for migrants, deported and banned from entering EU territory for five years.

As a consequence, anti-migrant policies are legitimised and in turn institutionalise and strengthen this process of criminalisation: criminalisation of emigration in several countries of origin and transit in support of the implementation of the European migratory policy (Algeria, Morocco, Tunisia, etc.[1]), introduction of a "criminal offence of illegal entry or stay" in some destination countries (in Italy for example[2]) and imposition of racial profiling practices against migrants across Europe.

This process of criminalisation, which involves both terminology and practices, "manufactures" the irregular status of a migrant, by presenting him or her as an "illegal migrant" or even an invader threatening the well-being of European societies. This legitimises in the public eye an administrative, legal and political system aimed at repressing immigration.

Although the Court of Justice of the European Union (CJEU) considers that the mere fact that a migrant is staying irregularly should not be punished by imprisonment, the detention of migrants is a fact: in cells, deprived of their freedom, they wait for a decision on their fate, often without knowing why they are there.

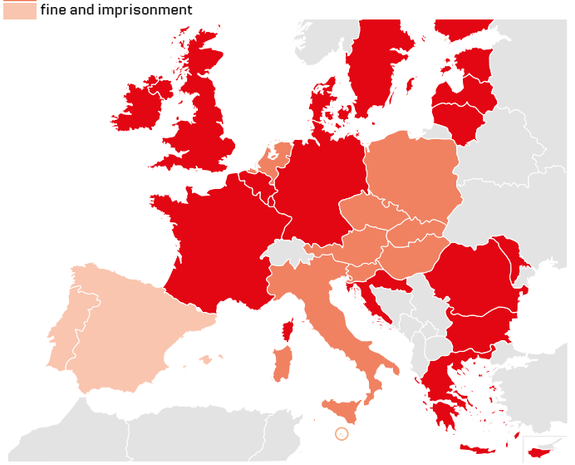
Is it a crime to flee poverty, war or persecution? Is it a crime to believe in a better future or simply to be denied the renewal of a residence permit?

1
Algeria: Law N° 08-11 of 25 June 2008 on the conditions of entry, residence and movement of migrants.
Morocco: Law of 11 November 2003 on the entry and residence of migrants, and irregular emigration and immigration.
Tunisia: Law N° 75-40 of 14 May 1975 on passports and travel documents.

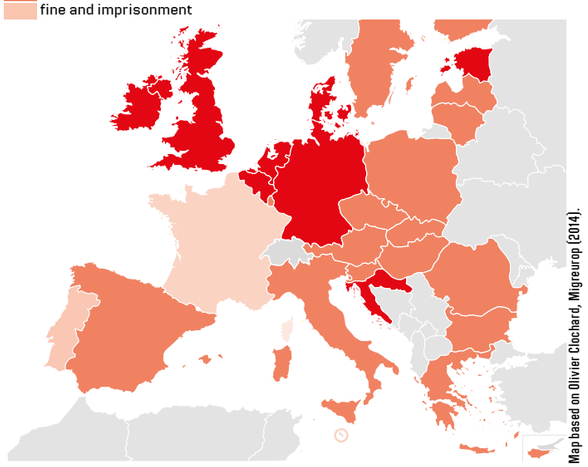
2
The "offence of illegal immigration", introduced by former Interior Minister, Roberto Maroni, from the Northern League party, in 2009, was decriminalised on 2 April 2014. However, entering the territory in violation of a deportation order remains punishable under criminal law.

CRIMINALISATION OF IMMIGRATION

At the time of entry into the territory, the law specifies:
- administrative detention as in all EU states
- fine
- fine and imprisonment



For foreigners without residence permit the law specifies:
- administrative detention as in all EU states
- fine
- fine and imprisonment



Map based on Olivier Clochard, Migreurop (2014).
Source: Fundamental Rights Agency of the European Union.

A Venezuelan man came to Europe as a tourist. He was arrested on his arrival in Madrid, on the grounds that, according to the authorities, he did not have sufficient cash. He was returned to his country of origin.
« *They took our passports away* [from a group of Venezuelan men and woman]. *To leave they took us as if we were criminals, with our hands not in cuffs but attached behind our backs. We walked in single file to a bus which took us to the plane. We had to wait until we got to our country to be given our passport back. They said we wouldn't have a stamp in our passport and that there would be no mark, but when we finally got them back we saw that they had put a big black stamp saying we had been rejected.* »
Source : "Paroles d'expulsé·e·s", Migreurop, 2011, p. 53 (available in French only)

A man from Burundi who fled his country and was detained on four occasions. He has been in France for 13 years, in an irregular situation, but is non-removable for administrative reasons.
« *I am very shocked by the idea of locking people up just because they do not have any documents. They did not do anything wrong and they are not dangerous. Some people lose everything when they are arrested: their job and their family.* »
Source : pointofnoreturn.eu/en/michel

A Nigerian man, survivor of a fire in the Schiphol detention centre (Amsterdam) in 2005, was deported to Lagos.
« *Each deportee was personally escorted by three police officers from the country we were being deported from and by medical officers from the Netherlands and France. All the deportees had their hands and feet tied* [with a strap linking handcuffs and feet ties together] *and held in a bodycuff* [waist and hand restraint]. *We were unfastened just before arriving in Lagos.* »
Source : "Paroles d'expulsé·e·s", Migreurop, 2011, p. 29 (available in French only)

A Congolese woman (from Democratic Republic of Congo), has been in Belgium for 12 years, she is undocumented and non-removable because of her family links.
« *In September 2012, I was arrested at work. It was very humiliating; I felt like a criminal. They took me to a detention centre by the airport. All I was told was that unreported employment is illegal in Belgium, but other than that – nothing.* »
Source : pointofnoreturn.eu/wp-content/uploads/2014/01/PONR_report.pdf
>page 41

2F Euphemism used to normalise unjust policies

European States use euphemisms to refer to the measures adopted: Romania refers to "public support centres" (Centrul de custodie publica). Turkey – an EU candidate country – went as far as using the term "guest houses", until it was called to order by the Committee for the Prevention of Torture (CPT) which recommended use of the term detention centres "since the persons held in these centres are undoubtedly deprived of their liberty"[1].

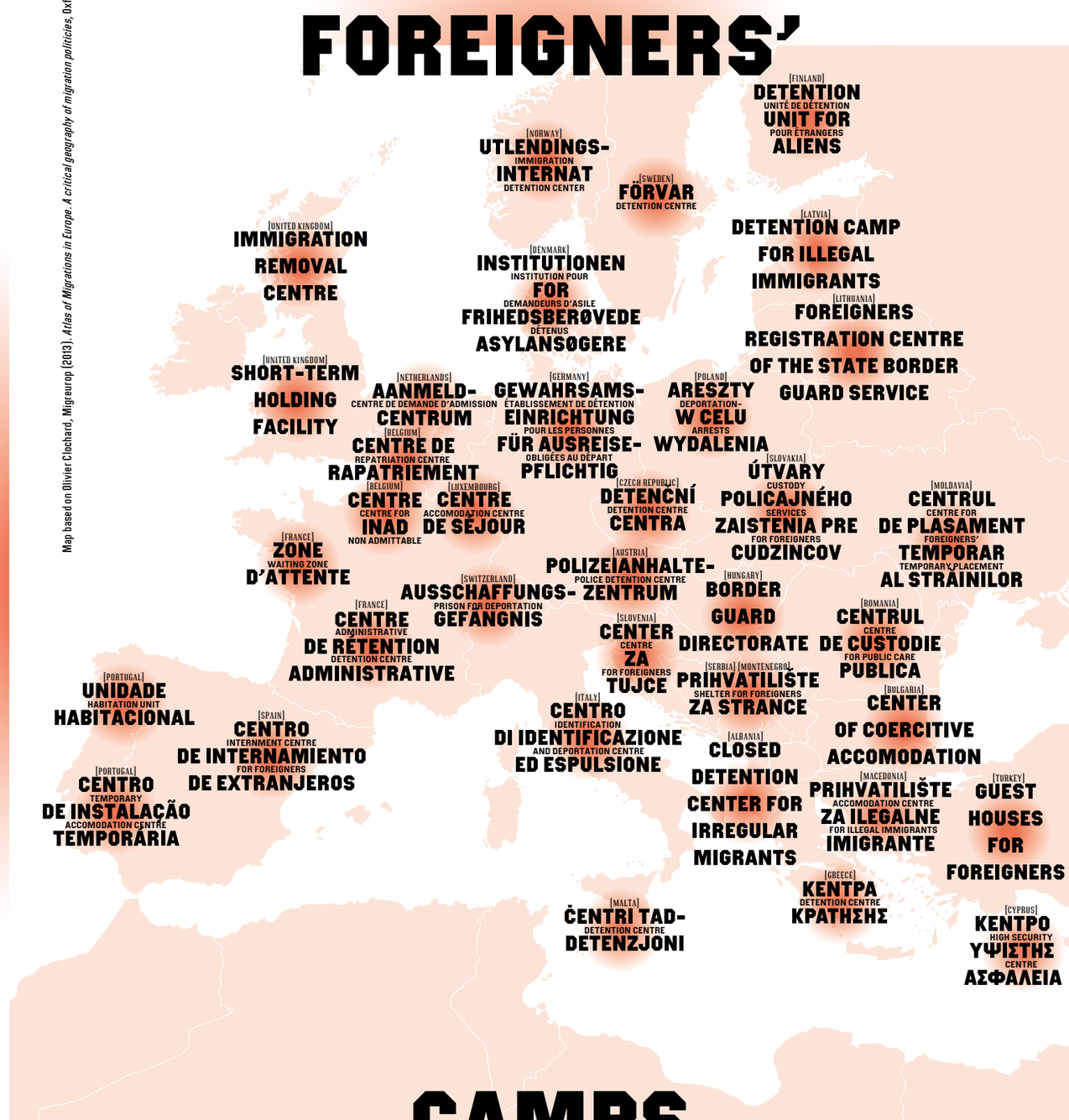
The use of euphemisms is not limited to the description of detention centres. Terms used by politicians and in laws are also dressed up: the verbs "hold" or "keep" are used instead of detain, "dismiss" instead of "deport". This represents a form of denial to avoid taking responsibility for ill-treatment to which detention gives rise.

For these reasons, Migreurop has chosen to use the word "camp" to designate the various premises on which migrants are detained, to which the authorities of numerous States across the world increasingly resort[2].

1
CPT, "Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 17 June 2009", March 2011, p. 26.
2
Migreurop, "Derrière le mot 'camp'", ("Behind the word 'camp'"), November 2004 (available only in French).

Camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni

Map based on Olivier Clochard, Migreurop (2013). *Atlas of Migrations in Europe. A critical geography of migration politicies*, Oxford, New Internationalist, 150 p.



3 WHERE TO DETAIN?

3A The diversity of migrant detention facilities

The first detention facilities for irregular migrants – which show "similarities" to those existing today – appeared in the mid 1960s, such as the Arenc centre in the port of Marseille. But their number only started to grow significantly during the 1990s.

In 1992, the French Government invented "waiting zones", to hold migrants who have been denied entry to the territory and those requesting entry for asylum purposes in airports, railway stations and ports.

In 1993, following the renovation of a former prison for youth offenders, Campsfield House, this facility became the largest centre for the detention of migrants in the United Kingdom[1]. The Government at the time referred to it as a "safe house".

In Belgium, in the 1990s, several "centres for illegal migrants" were established, such as in Bruges, Merksplas (Antwerp) or Vottem (Liège).

These detention facilities, referred to by various euphemisms, have a variable nature and form: some – the most official ones – are subject to EU laws; others are not and may even not be subject to any clear regulatory framework; some are even invisible and escape any form of civil society monitoring and any (independent) control over the respect of fundamental rights.

1
For further information, see "Campaign to Close Campsfield".

Camp of Las Raices, Tenerife (Canary Islands, Spain), March 2007.
© Sara Prestianni

Image Sébastien Marchal. Frames of a sequence filmed by the association KISA at the opening of the detention centre of Mennogeia (Cyprus) in February 2013.

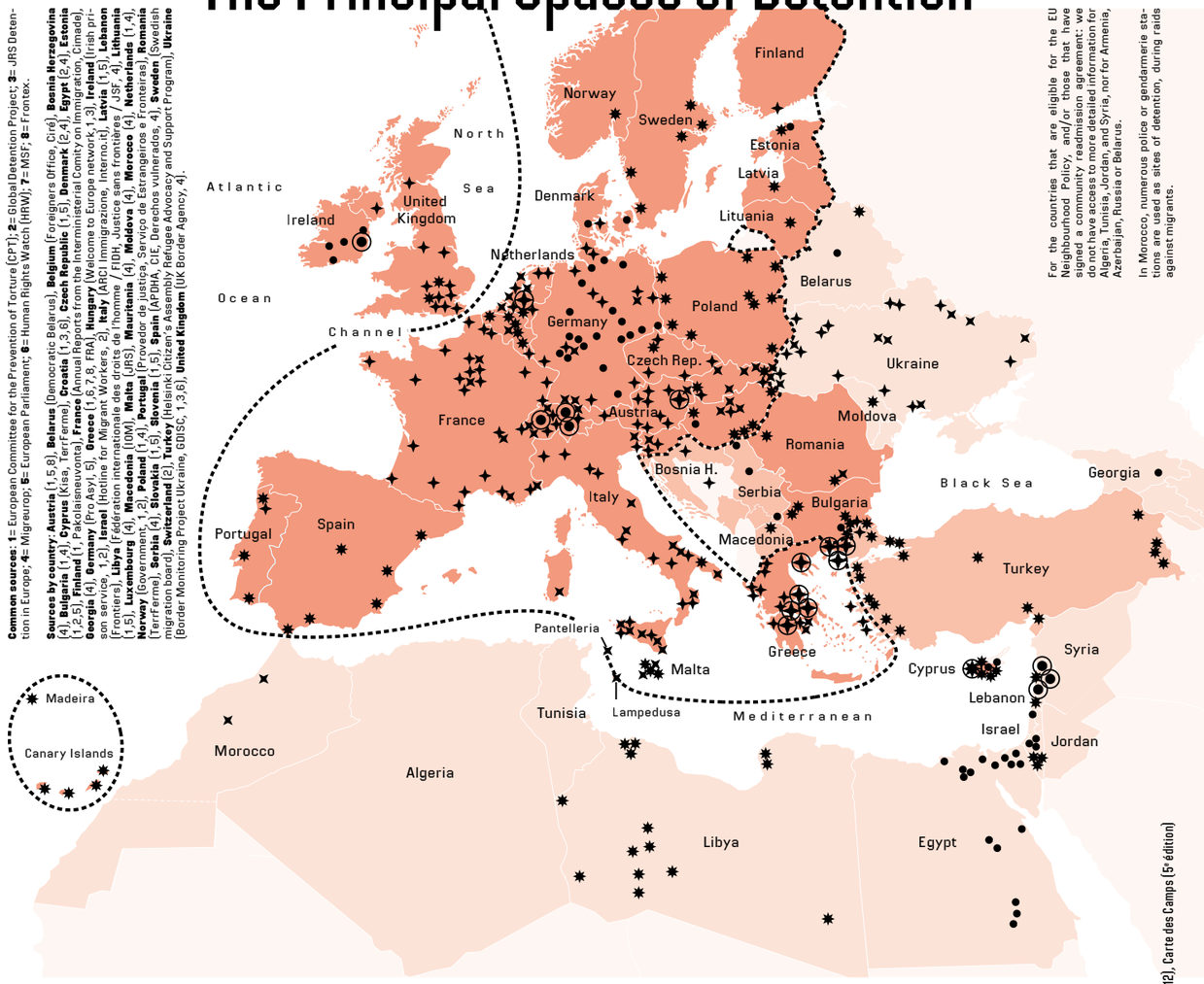
3B Official facilities

In 2011, the Migreurop network listed close to 300 existing migrant detention facilities throughout the 27 EU countries. If those linked to the EU's migration policy located in countries outside the EU are added – such as in Ukraine, Turkey or Libya – the number reaches almost 420.

The significant number of detention facilities in EU neighbouring countries is directly linked to the security-based approach to migration adopted by EU Member States. It also illustrates the process of rationalisation of the detention of migrants, that can be seen through the construction of large facilities near major airports: 623 beds in Harmondsworth (United Kingdom), 354 in Ponte Galeria (Rome), Le Mesnil Amelot (France) with a capacity of 240 beds and since 2013 a centre with a capacity 250 opened in Menogeia (Cyprus) in the vicinity of Larnaka.

Camp of Vathi, island of Samos (Greece), March 2009.
© Sara Prestianni

The Principal Spaces of Detention



Common sources: 1= European Committee for the Prevention of Torture (CPT); 2= Global Detention Project; 3= JRS Detention in Europe; 4= Migreurop; 5= European Parliament; 6= Human Rights Watch (HRW); 7= MSF; 8= Frontex.

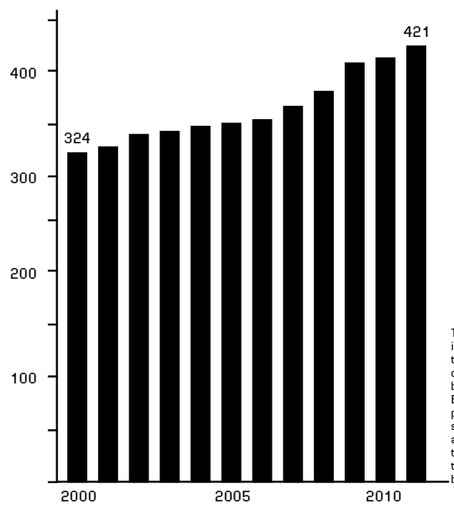
Sources by country: Austria [1,5,8], **Belarus** [Democratic Belarus], **Belgium** [Foreigners Office, Ciré], **Bosnia Herzegovina** [4], **Bulgaria** [1,4], **Cyprus** [Kisa, TerrFerme], **Croatia** [1,3,6], **Czech Republic** [1,5], **Denmark** [2,4], **Egypt** [2,4], **Estonia** [1,2,5], **Finland** [1, Pakolaisneuvonta], **France** [Annual Reports from the Interministerial Comity on Immigration, Cimade], **Georgia** [4], **Germany** [Pro Asyl, 5], **Greece** [1,6,7,8, FRA], **Hungary** [Welcome to Europe network,1,3], **Ireland** [Irish prison service, 1,2], **Israel** [Hotline for Migrant Workers, 2], **Italy** [ARCI Immigrazione, Internos.it], **Latvia** [1,5], **Lebanon** [Frontiers], **Libya** [Fédération internationale des droits de l'homme / FIDH, Justice sans frontières / JSF, 4], **Lithuania** [1,5], **Luxembourg** [4], **Macedonia** [IOM], **Malta** [JRS], **Mauritania** [4], **Moldova** [4], **Morocco** [4], **Netherlands** [1,4], **Norway** [Government, 1,2], **Poland** [1,4], **Portugal** [Provedor de justiça, Serviço de Estrangeiros e Fronteiras], **Romania** [TerrFerme], **Serbia** [4], **Slovakia** [1,5], **Slovenia** [1,5], **Spain** [APDHA, CIE, Derechos vulnerados, 4], **Sweden** (Swedish migration board), **Switzerland** [2], **Turkey** [Helsinki Citizen's Assembly Refugee Advocacy and Support Program], **Ukraine** [Border Monitoring Project Ukraine, GDISC, 1,3,6], **United Kingdom** (UK Border Agency, 4).

For the countries that are eligible for the EU Neighbourhood Policy, and/or those that have signed a community readmission agreement: we do not have access to more detailed information for Algeria, Tunisia, Jordan, and Syria, nor for Armenia, Azerbaijan, Russia or Belarus.

In Morocco, numerous police or gendarmerie stations are used as sites of detention, during raids against migrants.

- Camp for foreigners present on the territory of a State and awaiting deportation
- Camp for foreigners that have recently arrived upon the territory of a State (pending examination of their request for entry to remain within the territory)
- Camp for foreigners combining both functions (examination of entry requests and deportation)
- Civil law prison regularly used for the administrative detention of foreigners
- Presence of five detention facilities in the same geographic zone
- Limits of the Schengen space
- Member of the European Union and/or signatory of the Schengen agreements
- Candidate country for the European Union
- Country that is eligible for the EU Neighbourhood Policy

Change in the number of foreigner detention camps in Europe and in the Mediterranean countries between 2000 and 2012



The graphic takes into account the totality of the camps identified by Migreurop. But only the permanent structures with a capacity greater than or equal to five people have been mapped.

Map based on Migreurop (2012), Carte des Camps (5e édition)

3C Waiting zones governed by arbitrary rules set by national authorities

Palermo airport (Italy), hangar where Tunisian migrants waiting for deportation were kept in September 2011, July 2014. © Grazia Bucca

Next to this first category of camps, there are various detention facilities located at the borders where EU Governments are not bound by the "Return" Directive. In such places, those detained are people "*subject to a refusal of entry* […] *or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State*"[1]. They are detained in such facilities until a decision is made on their request to enter the territory and/or their return to the country of departure is organised. Contrary to statements of the European Commission (EC)[2], migrants detained there do not have access to a level of protection similar to that provided in "official" facilities.

From 2008 to 2012, close to 2.2 million entry refusals were reported at the EU's external borders[3]. Most of those intercepted within this framework were detained for several hours or days, pending the organisation of their return to the country of departure. These people did not benefit from the rights mentioned in the "Return" Directive, such as the right to have an effective remedy.

The surveillance and expeditious deportation of numerous migrants lead them to take risks and use very dangerous maritime routes, resulting in dozens of shipwrecks and hundreds of casualties.

The same applies on the island of Mayotte (French overseas department), where migrants intercepted at sea are brought to the Pamandzi Centre before being sent back to the Comoros Islands. In 2012[4], the European Court of Human Rights (ECtHR) condemned France stating that the exceptional procedures applied in some French overseas territories are contrary to the right to an effective remedy guaranteed by Article 13 of the Convention. The case concerned a migrant returned to the border of Guyana, before the Cayenne Administrative Court had decided on an appeal.

1 "Return" Directive (115/2008/EC), Art. 2.

2 EC, COM(2014) 199 final, p. 27.

3 Source: Eurostat (636,330 in 2008, 500,885 in 2009, 396,115 in 2010, 344,165 in 2011 and 317,170 in 2012).

4. ECtHR, De Souza Ribeiro v. France, 13 December 2012.

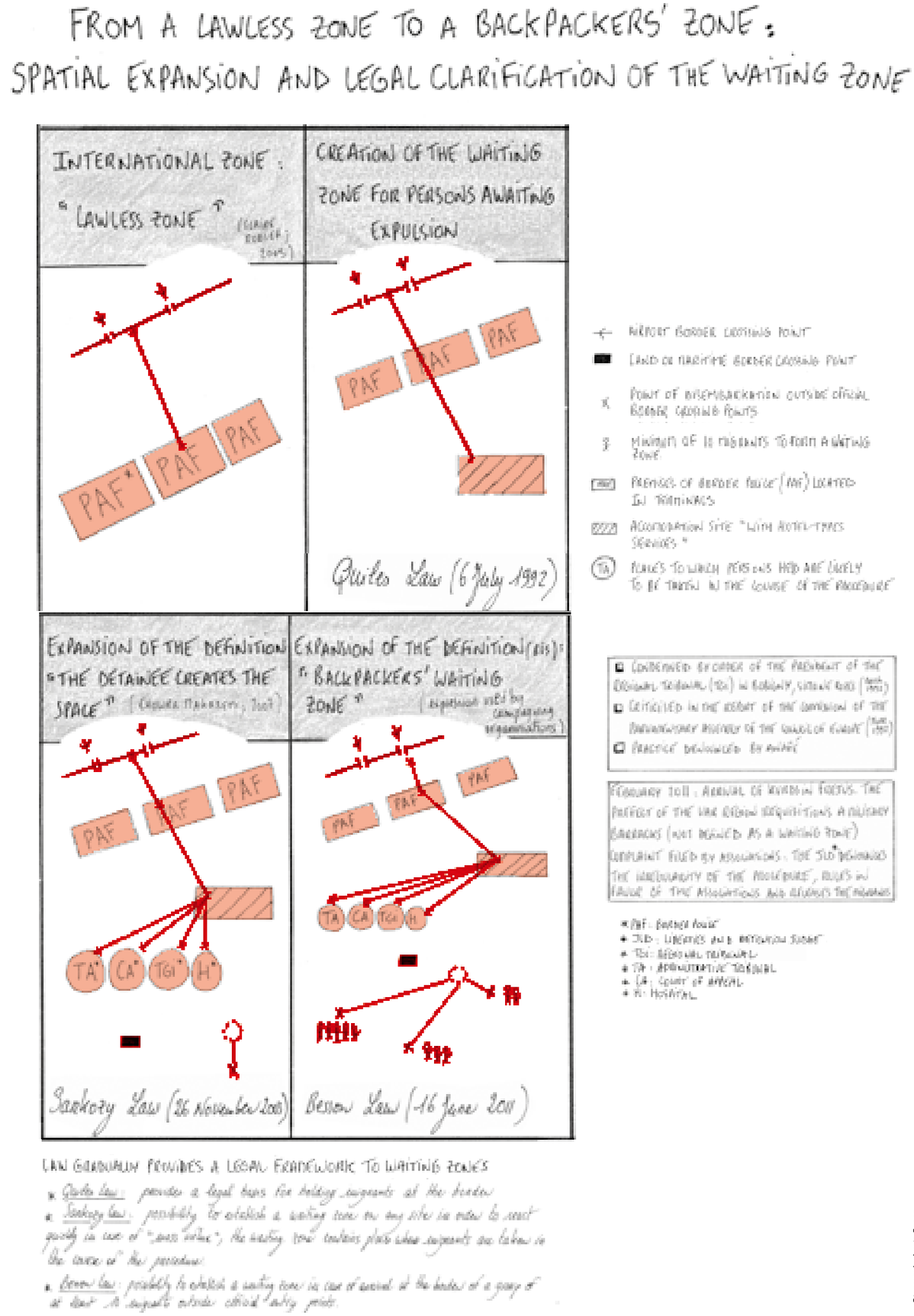


Diagram by Lucie Bacon.

3D Invisible facilities, beyond the reach of citizen watch

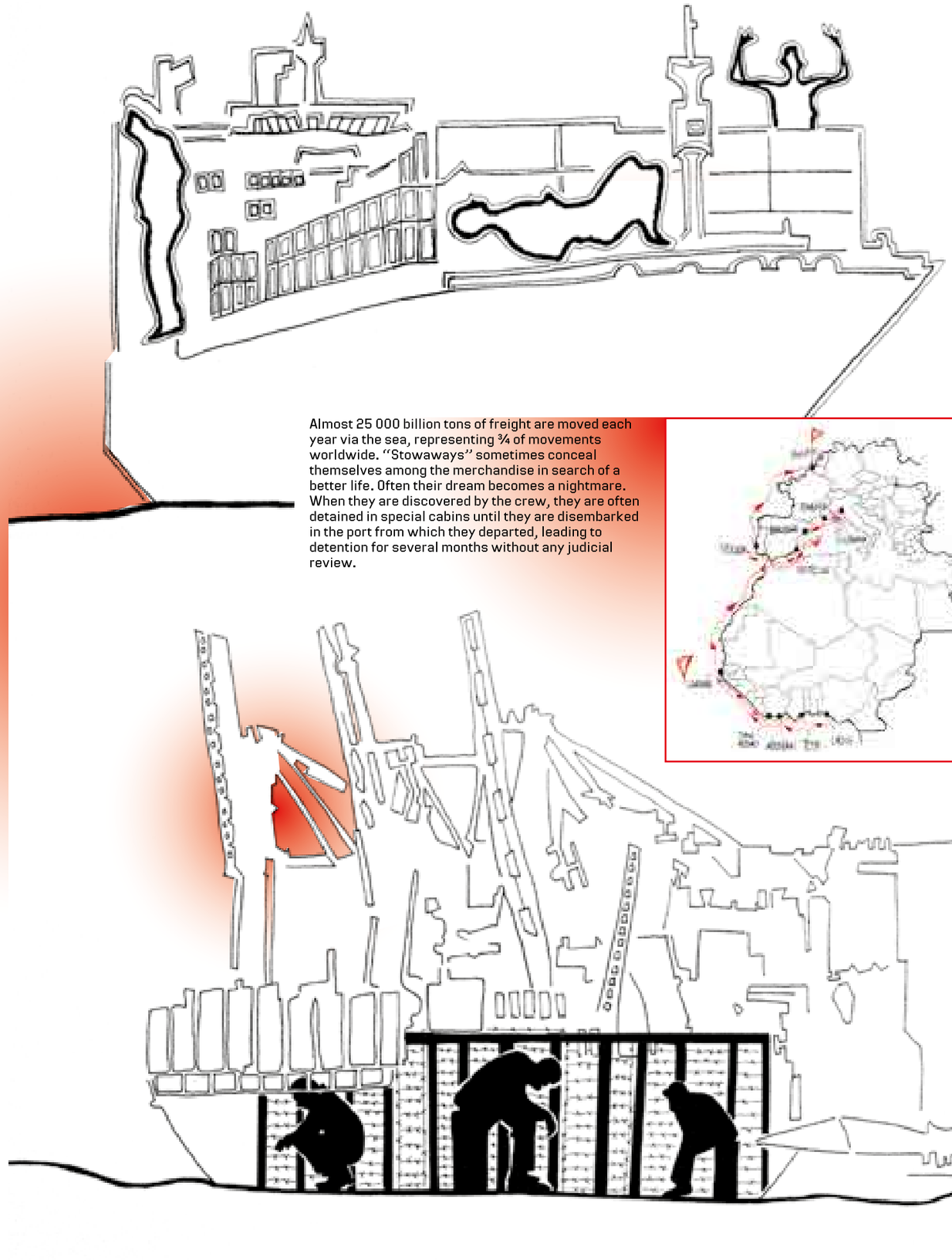
Numerous processes have been set up beyond scrutiny and without any legal basis. In Marseille, from 1964 to 1980, the administration used premises located in the port to detain migrants; another site was created at the Roissy Airport at the end of the 1980s until 1992, when a law on "waiting zones" was passed. On each occasion, such informal set-ups form a sort of "necessary pre-condition" to the subsequent adoption of a law providing for an exceptional regime.

Despite national and European legislative developments, these practices continue. Today a multitude of sites are used as improvised detention facilities, such as police stations at EU's external borders, or in neighbouring countries such as Morocco or Turkey[1]. On merchant navy vessels, when "stowaways" are discovered, they can be detained in cabins for weeks or even months. In the Mediterranean Sea, when Italy or Malta refuse the disembarkation of boat people rescued by vessels (in violation of the 1951 Geneva Convention on refugees and the principles of non-refoulement of asylum-seekers), the latter are also turned into places of detention for these survivors until their return to the country of departure (Morocco, Tunisia, Libya, etc.).

Among these locations which are difficult to identify, we should add those used temporarily by transport companies: (air)port premises, lorries, buses or planes or even train compartments, which the national police or the Frontex Agency use during deportations or returns.

1
For example, in 2009, the ECtHR condemned Turkey for the detention of two Iranian nationals deprived of access to the asylum procedure and risking deportation to Iran. ECtHR, Abdolkhani and Karimnia v. Turkey, 22 September 2009.

Controls at the Patras Harbour (Greece), March 2009. © Sara Prestianni



Almost 25 000 billion tons of freight are moved each year via the sea, representing ¾ of movements worldwide. "Stowaways" sometimes conceal themselves among the merchandise in search of a better life. Often their dream becomes a nightmare. When they are discovered by the crew, they are often detained in special cabins until they are disembarked in the port from which they departed, leading to detention for several months without any judicial review.

Illustrations by Lucie Bacon

3E Detention sites are like prisons

In general sites used to detain migrants are very much like prisons. In some cases, these places are in fact prisons holding common criminals.

The "Return" Directive provides that "*detention shall take place as a rule in specialised detention facilities*"[1], Member States can also use prison establishments to hold "undocumented" migrants simply for failing to hold valid residence permits. In such cases, migrants must be "*separated from ordinary prisoners*". In Switzerland and in some German regions, the authorities detain "undocumented" migrants in their prisons.

According to a judgement issued by the CJEU on 28 April 2011[2], migrants should not be punished by prison sentences simply for failing to hold valid residence permits. Despite this judgement, some European countries continue to use prisons to hold "undocumented" migrants.

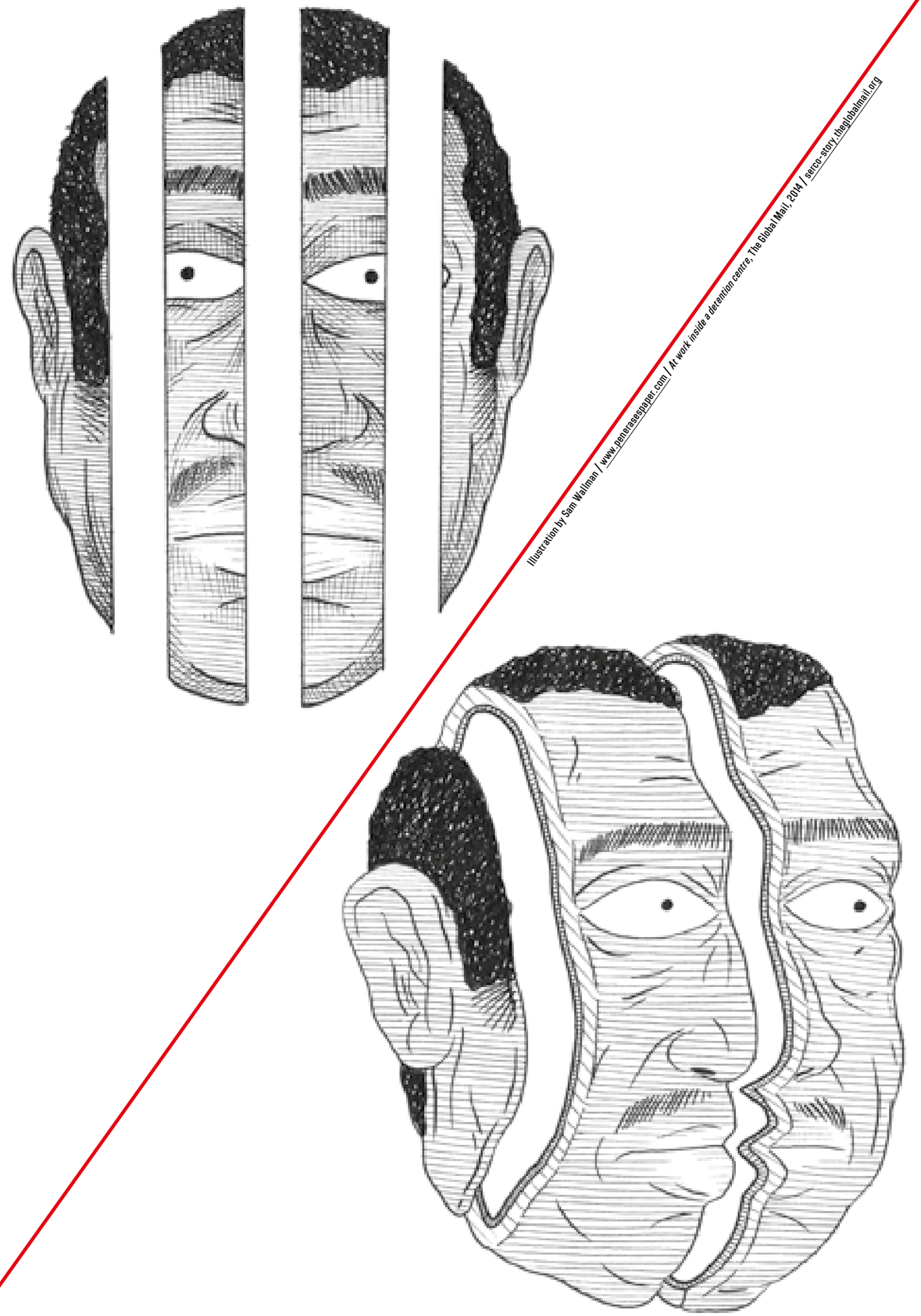
This is the case in Cyprus where people seeking international protection are often sentenced to several months in prison. They are then transferred to administrative detention facilities such as that in Menogia, which in many ways looks like a high-security prison: searches, isolation in cells, the right to exercise in a yard limited to two and a half hours per day[3], difficult access to the telephone and legal advice, etc. The Menogia centre is not an exception. There are numerous camps in Europe which are being operated like prisons.

1 "Return" Directive (115/2008/EC), Art. 16.

2 CJEU, C-61/11 PPU (El Dridi), 28 April 2011.

3 According to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) "prisoners in remand establishments [should be] able to spend a reasonable part of the day (8 hours or more) outside their cells" (2013).

Camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni



[Illustration by Sam Wallman / www.panenseespaper.com / *At work inside a detention centre*, The Global Mail, 2014 / serco-story.theglobalmail.org]

4 HOW TO DETAIN?

4A Detention as a measure of "last resort"

According to the "Return" Directive, detention should be an exceptional measure, allowed only when other less coercive measures cannot be applied to carry out a deportation because there is a *"risk of absconding"* or *"the third-country national concerned avoids or hampers the preparation of return or the removal process"*[1].

However, in practice, several Member States make systematic use of detention, even though it is clearly defined as a measure of "last resort" in national law and even though national law gives priority to economic sanctions rather than detention (e.g. Spain).

In countries such as France, the police are given a target for the number of people to be deported. This is the case despite the fact that the effective deportation rate is relatively low.

While stating that *"any detention shall be for as short a period as possible"*, the "Return" Directive provides that the length of detention shall not exceed 18 months[2]. Various tactics may be used to prolong this maximum period: in Cyprus, when a migrant is ordered to be released by the Supreme Court, the police arrest him or her at the exit of the court and s/he is placed in detention on the basis of a new deportation order. In Belgium, when a migrant contests deportation, "the clock is reset", which allows for the indefinite extension of detention. The Greek State Council issued an opinion on 20 March 2014 providing for the indefinite extension of the detention of migrants until deportation can be carried out, in the event that the latter have not cooperated in the return procedure or accepted "voluntary" return and there is a risk of absconding[3].

The Directive makes "voluntary return" a priority. In practice, very few migrants have access to this measure. Sometimes presented as an alternative to detention, NGOs criticise "voluntary returns" as merely another tool to serve detention and deportation policies.

1 "Return" Directive (115/2008/EC), Art. 15§1.

2 "Return" Directive (115/2008/EC), Art. 15§6 and 15§6.

3 Opinion 44/2014, 20 March 2014 (available in Greek only).

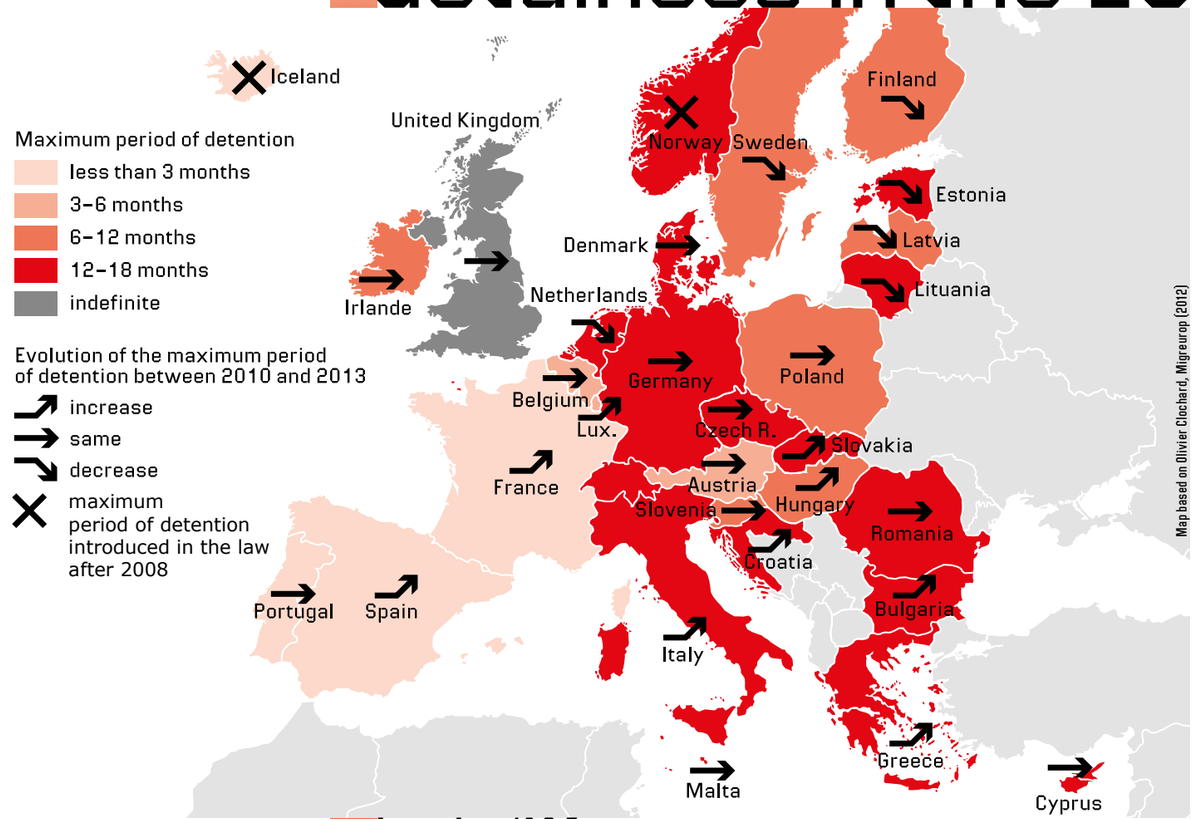
Camp of Fellakio (Greece), March 2008. © Sara Prestianni

"The Return Directive has contributed to a convergence – and overall to a reduction – of maximum detention periods across the EU."

COM(2014) 199 FINAL, P. 17 AND P.30

The Return directive adopted on 16 December 2008 – including the maximum period of detention of 18 months – had to be transposed before 24 December 2010 by all Member States, except the United Kingdom and Ireland.

Maximum periods of detention for foreign detainees in the EU



Less than 10% of foreign detainees are affected by a decrease of the maximum period of detention.

4B Contact with the outside world

Relationships between detainees and their close families and friends is heavily restricted: limited visits (only on certain days of the week), duration of visits (they can be limited to 30 minutes), modalities (through panels, without any intimacy, under the watch of prison guards), restrictions on giving items to detainees. In some centres, the high number of detainees further limits the possibility of visits, which sometimes turn out to be impossible due to the high number of visitors.

In the United Kingdom, where management of the majority of the facilities is entrusted to private companies, visits are authorised but taking notes is prohibited. The control of the visitor can go as far as fingerprinting and taking photos. In numerous cases, detainees do not have access to their mobile phones nor to the Internet and have to make calls, without any confidentiality, from telephone booths – the availability of which in terms of number and hours is often limited.

Camp of Venna (Greece), March 2009.
© Sara Prestianni

Visiting room of the "Immigration detention centre" (CIE) of Sangonera La Verde (Valencia, Spain).
Photos taken in 2013 by members of the "CIEs NO" campaign.

4C (Lack of) Access to information on rights of detainees

Lack of information on the reasons for detention and their rights is the norm.

Their administrative situation, rights and possible remedies are often explained to detainees in a language they do not understand. Where the rules on the operation of a centre are provided in writing, they are rarely available in the language spoken by the persons concerned.

In many cases, detainees do not know that they can contact NGOs for support, since the management of the centres rarely brings such information to their attention. In many countries, detainees do not have access to all documentation concerning the deportation procedure. Furthermore they are generally not informed in advance of the date and time of deportation and they do not have the opportunity to contact their families in the country of destination to arrange to be collected from the airport.

In the majority of centres, there are no protocols to detect victims of trafficking, vulnerable persons or more generally those who may benefit from international protection.

IOM workers briefing migrants at the Lampedusa airport (Italy), February 2011. © Sara Prestianni

Image Sébastien Marchal

4D Privatisation of services in detention centres

The detention industry is increasingly looking to the privatisation of the management of migrant detention centres. The United States provides an example of the symbiosis which can exist between this industry and the tightening of legislation likely to result in more "clients" and increased profits.

In the European Union (EU), privatisation was pioneered by the United Kingdom where the State controls only part of the centres. The rest is entrusted to private companies, from construction and maintenance, to access to healthcare, accommodation social services and security. Under contracts with the UKBA agency, which is under the Home Office, the companies G4S and Serco each manage three centres and the GEO group, which is strongly implanted in the United States, manages one.

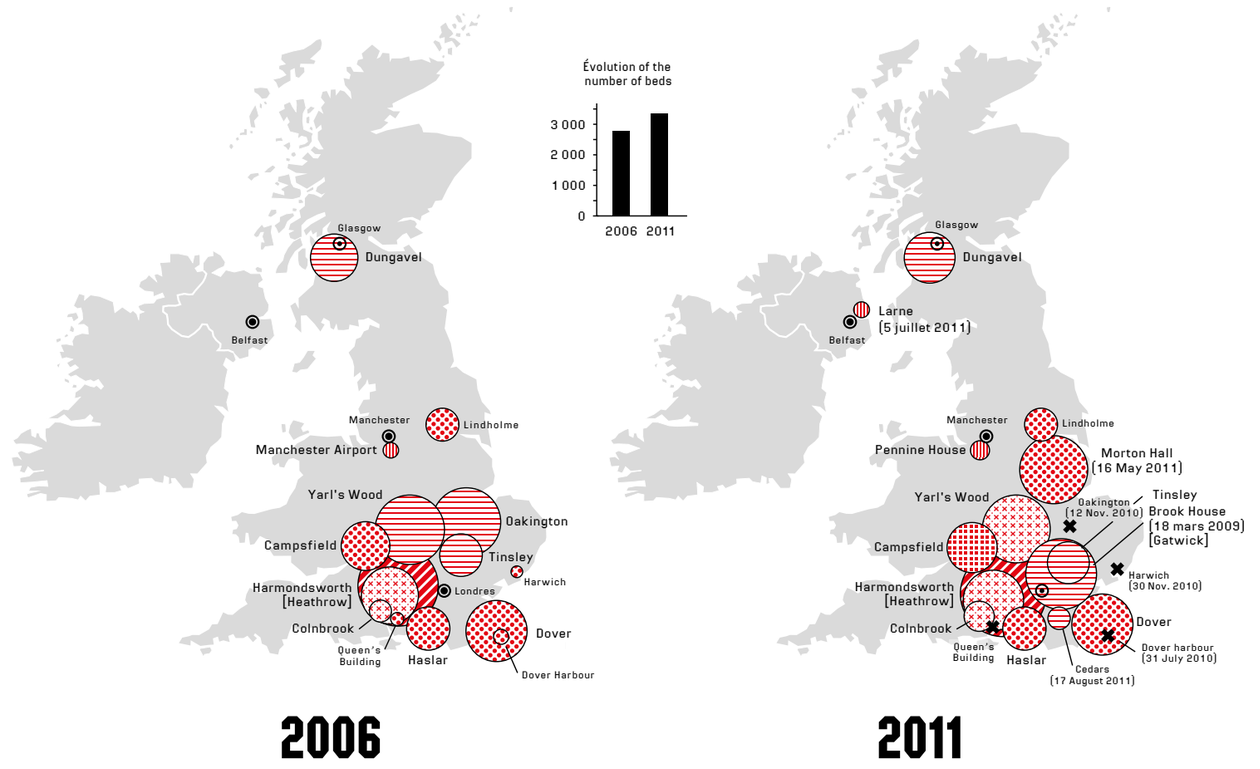
In Germany, several regions have paved the way for privatisation by concluding contracts with European Homecare (detention centres and waiting zones in the airports in Dusseldorf and North-Rhine Westphalia) and B.O.S.S Security and Service (detention centre in Eisenhuttenstadt).

In other EU countries, administrative files on migrants in an irregular situation remain under the responsibility of the police authorities, while the material management of detention premises is increasingly entrusted to private companies. In France, the group Bouygues participated in the construction of several centres (Lyon, Marseille, Nimes, Rennes) within the framework of the "public-private" partnership (PPP).

These various trends reveal a logic of industrialisation, which resembles that taking place in the prison system. In some cases, the same companies are concerned, such as Gepsa in France. The process opens the door to companies looking to increase their profits without concern about human rights and protection of the persons concerned.

In 2012, the Greek government used the argument of job creation to justify the opening of new detention centres. The establishment of thirty centres, each intended to employ 1000 persons, was trumpeted in the media.

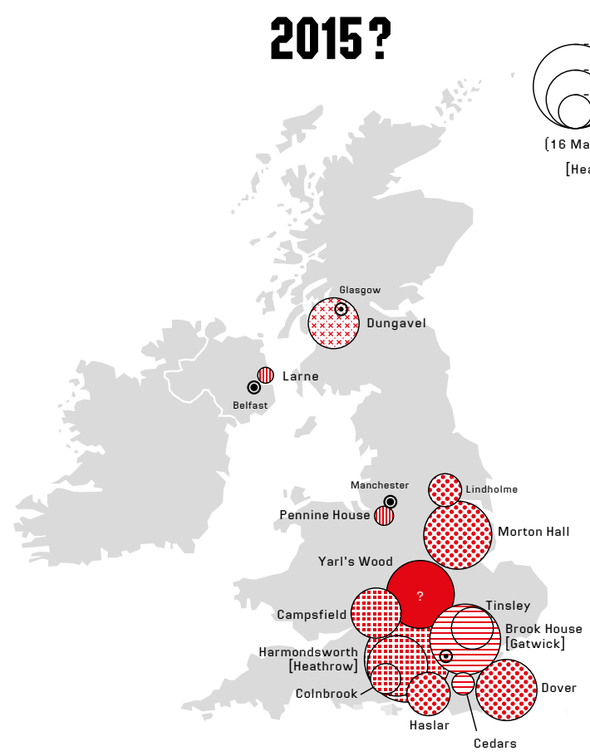
Transfer from the harbor to the so-called "first aid and reception centre" in Lampedusa (Italy), September 2013. © Sara Prestianni



Maps based on Elsa Tyszler and Olivier Clochard. © Migreurop (2014).

PRIVATISATION, SCANDALS AND ECONOMIC COMPETITION IN MIGRANT DETENTION CENTRES IN THE UNITED KINGDOM

Sources : Global Detention Project, Home Office, Her Majesty's Chief Inspector of prisons, websites of G4S, Mitie, Serco, Geogroup and Tascor



Capacity of the detention centre
623 (Harmondsworth)
300
100
(16 May 2011) Opening or closing date of the centre
[Heathrow] Proximity to a large airport
✖ Camp which is not used by the authorities

300 allegations of physical assault and racist violence committed by private security guards during deportation procedures
(Medical Justice, 2008)
The majority of these complaints were made by asylum seekers, between 2004 and 2008. 108 complaints were for physical assault, 38 for racist abuse and 7 for sexual assault, etc.
Two thirds of complaints concern Yarl's Wood and Harmondsworth. 24% of them concern G4S.

April 2010: A Kenyan man dies in the Oakington detention centre. His health had been seriously neglected.

October 2010: A Colombian man is severely injured during deportation by G4S guards.
Jimmy Mubenga, an Angolan asylum seeker, died during deportation by G4S employees.

773 complaints are filed by detainees against G4S, including 48 for assault.

Detention centre managed by:
G4S
Serco
Geogroup
Tascor
Mitie
The governmental organisation Her Majesty's Prison service

July 2004: A 14-year old Kosovar boy commits suicide. In 2011, an investigation concludes that excessive use of force by Serco guards contributed to his death.

February 2010: 84 women detained in Yarl's Wood go on hunger strike to protest against the length of their detention and the inhuman treatment inflicted by guards employed by Serco. The guards use violence to quell the rebellion.

2011: Two men die of heart attacks. An investigation concludes that employees neglected the first victim. The death of the second man was unexplained.

2013: Allegations of sexual abuse committed by guards against detainees in Yarl's Wood. Witnesses are deported.

2014: A Jamaican detainee dies in the Yarl's Wood Center

February 2013 : Alois Dvorzac, an 84-year old Canadian man with Alzeihmer's disease dies while handcuffed at Harmondsworth Centre.

July 2013 : Tahir Mehmood, a 43-year old Pakistani man, dies at the Pennine House Centre

4E Detention damages the health of detainees

In a report on Greece, Médecins Sans Frontières[1] highlighted respiratory problems linked to exposure to cold, overcrowding and the lack of treatment for infection; skin diseases such as scabies, bacterial and fungal infections resulting from overcrowding and unsanitary conditions; gastrointestinal problems caused by poor diet, lack of exercise and high stress levels; musculo-skeletal problems due to the lack of space and exercise and an uncomfortable environment. There are also sick-persons whose treatment is interrupted when they are placed in detention.

Detention and degrading and humiliating treatment experienced by migrants also have a clear implact on mental health: post-traumatic stress, depression, anxiety, fear and frustration. The deprivation of liberty exacerbates pre-existing traumas and contributes to acts of self-mutilation and suicide attempts.

In 2009 and 2010, over a third (37%) of migrants detained in Greece suffered psychological problems caused by detention[2]. Despite this, in Greece and elsewhere, the vast majority of centres do not provide psychological assistance.

Whether in communal spaces or in cells (in which the number of detainees is rarely less than six), day and night, detainees live in close proximity to many others. The total lack of privacy also has an effect on their mental health.

In this context, improper use of psychotropic drugs is a method used to control detained populations. According to estimates by the NGO Medici per i diritti umani (MEDU), 90% of detainees receive such drugs in the via Corelli centre (Milan), 66% in Bologna and 60% in Trapani Milo[3].

1
MSF, « Invisible suffering », April 2014.

2
Ibidem.

3
MEDU, Arcipelago CIE, May 2013 (summary available in English).

Camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni

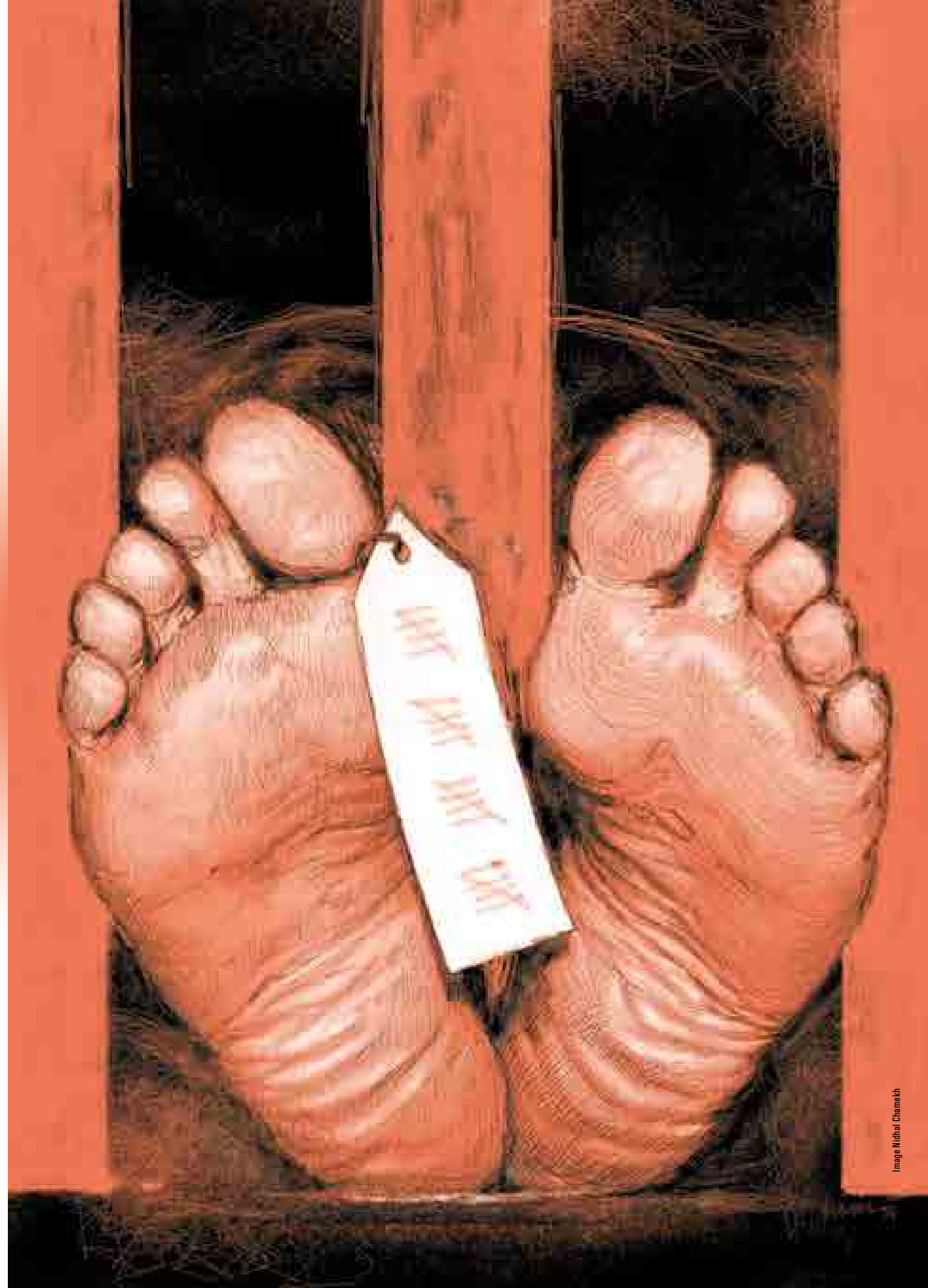


Image Nidhal Chamekh

5 WHAT DEMOCRATIC SCRUTINY OVER DETENTION?

5A (Uncertain) control of detention by a judge and (insufficient) access to legal assistance

Under Article 6 of the European Convention on Human Rights (ECHR), everyone is entitled to a hearing by an independent and impartial tribunal.

This means that detention must be based on a written document issued by the judicial or administrative authorities and that EU Member States must put in place a mechanism for automatic judicial review or enable migrants to request review of the legality of detention by a judge. This review must take place in the shortest time possible after the beginning of the detention period[1].

However, in many countries judicial control is not guaranteed. Judicial review is not systematic and systems vary greatly from one country to another: no review on a judge's own motion, intervention subject to migrant's initiating request (Cyprus, Belgium); judicial authority without expertise in immigration law (Italy); no review (Croatia, Bulgaria). Migrants cannot be assured that the legality of their detention will be reviewed by a judge, since this essential protection is emptied of meaning in practice.

One of the main obstacles to review is the difficulty in accessing legal assistance and the possibility of contesting detention and the deportation decision. According to the applicable texts, detained migrants must systematically receive information on their rights and in particular the right to an effective remedy (in law and practice) to enable them to contest decisions on detention and deportation. In order to exercise this right, they must have access to free legal advice and/or representation and, where necessary, an interpreter[2].

Examples of violations of these protections are numerous. They can be summarised as follows (the list is non-exhaustive):

- → Total absence of information or lack of knowledge of these rights: absence of documents concerning the rights and duties of detainees (Italy); lack of translation of this type of document (Bulgaria); documents translated but provided to detainees without any explanation (Spain).
- → Inadequate or inexistent system for legal assistance: a list of lawyers is available but not displayed (Italy); restricted access to lawyers (Bulgaria) and restrictions on designation of a second lawyer in case of problems with the first (Belgium); insufficient access to advice due to a lack of appropriate staff (Croatia).
- → Material problems: State does not cover costs of interpretation (France, Italy); confidentiality of exchanges not guaranteed and limited time with legal assistance (Italy).

According to the EC[3], the number of requests is below that it would be if detainees could exercise their rights, mainly because migrants are not always informed of their rights in a language they understand and legal assistance is not always effective. Furthermore, only ten Member States provide for appeals to automatically suspend deportation. There is therefore a major risk that migrants are deported before a judge has issued a decision.

Although as a measure of last resort there is the possibility of going before the European Court of Human Rights to request the emergency suspension of a deportation order (Rule 39 of the ECtHR Rules), the difficulties listed above cast serious doubt on the effectiveness of this remedy in practice and the means migrants have at their disposal to activate it.

1 "Return" Directive (EC/115/2008), Art. 15; "Reception Conditions" Directive (2013/33/UE), Art. 9.

2 European Convention on Human Rights, Art.13; "Return" Directive (EC/115/2008), Art. 13 and 16; "Reception Conditions" Directive (2013/33/UE), Art. 9 and 10.

3 EC, COM(2014) 199 final, p.27 and 28.

Office of the "giudice di pace" (administrative judge), camp of Ponte Galeria (Rome, Italy), May 2014. © Sara Prestianni

DETENTION OF FOREIGNERS: CONTROL AND JUDICIAL REMEDIES IN FRANCE

Foreigner detained in an administrative detention centre or in a waiting zone

Appeal

Administrative judge

Control of the legality of the decision (substance)

Application

Written
In French
Complex procedure
Short Deadlines

Control of the detention conditions (procedure)

Liberties and detention judge (JLD)

- Interpretation services not covered by the State
- Access to legal advice not systematic (no duty lawyers in waiting zones, limited means of associations present in detention centres)
- No suspension of deportation (except in the case of asylum seekers in waiting zones)
- On the 5th day in detention centres and on the 4th day in waiting zone. In 2012, 60% of migrants detained on mainland France and 90% in the overseas territories were removed before this time-period.

Several condemnations of France by the ECtHR on the (in)effectiveness of judicial remedies (See in particular, Gebremedhin v. France, 26 April 2007 and I.M. v. France, 2 February 2012)

DETENTION OF FOREIGNERS: CONTROL AND JUDICIAL REMEDIES IN CYPRUS

Foreigner detained in an administrative detention centre

Appeal

Access to legal aid (since transposition of the "Return" directive)

Contestation of the legality of detention and deportation

Supreme court

Contestation of the length of detention via a writ of habeas corpus

Judicial review only on the legality of the decision

- Only if there are reasonable prospects of success, which it falls on the complainant to prove, and if the latter does not possess adequate resources
- Lack of legal aid, except
- To lodge an appeal, 75 days delay from the notification of detention
- Procedures initiated by foreigners themselves
- Procedures lasting over one year
- No suspension of deportation
- Limited scope of judicial review

Condemnation by the ECtHR in the case of M.A. v. Cyprus The Court concluded that Cyprus had violated Article 13 (right to an effective remedy) of the European Convention on Human Rights combined with Article 2 (right to life) and Article 3 (prohibition on torture and inhuman and degrading treatment) on the grounds of the absence of an effective appeal system to challenge deportation decisions and Article 5 §§ 1 and 4 (right to liberty and security) on the grounds of the illegality of any period of detention without access to a procedure to seek an effective remedy. The Court also took into account the absence of suspensive effect of appeals to the Supreme Court, the length of legal proceedings, the absence of legal aid and the limited scope of judicial review by the Supreme Court.

5B Independent monitoring bodies

Independent monitoring bodies have been put in place at the international and national level (United Nations Subcommittee on Prevention of Torture – SPT – and the National Preventive Mechanisms – NPM) and the regional level (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT) within the Council of Europe and the UN human rights system.

The SPT and the CPT are in charge of preventing torture and other ill-treatment in all sites of deprivation of liberty. To this end, they have unlimited access to these sites, conduct visits, monitor detention conditions, can conduct confidential interviews with detainees and staff at the centres and on the basis of observations, initiate dialogue with States. The reports of visits are not published unless requested by the State concerned.

The CPT's mandate is also to ensure review and monitoring of detention conditions and underline standards which must be respected in such places (cf. 19th annual report published in 2009).

State parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) are obliged to establish independent National Preventive Mechanisms (NPM). They must be given sufficient resources to undertake regular visits in order to produce reports and recommendations, follow the process of drafting of laws and regulations and propose concrete reforms and preventive measures. The reports of the visits undertaken by the NPM are not made public but their annual activity reports are published.

Within the EU, 23 of the 28 Member States have ratified the Protocol[1]. All of them have established NPM, except Italy and Romania.

In November 2013, participants in the various European NPM met in Strasbourg to support a proposal aimed at the codification by the Council of Europe of rules concerning the detention of migrants applicable in Council of Europe Member States in a single document[2]. In a communication issued on 28 March 2014 on the European return policy, the European Commission expressed support to this initiative[3].

1
Belgium, Finland and Ireland have signed but not yet ratified. Latvia and Slovakia have not signed up to the Protocol.

2
The need for Council of Europe rules on immigration detention: A Declaration by European National Preventive Mechanisms against torture, Conference on Immigration Detention in Europe, 21-22 November 2013, Strasbourg.

3
EC, COM(2014) 199 final, p. 11

Camp of Venna (Greece), March 2009.
© Sara Prestianni

The standards of the CPT, often cited in the jurisprudence of the ECtHR concern first and foremost access to fundamental rights for all detainees: right to a lawyer, right to a doctor, right to inform a member of his or her family or a third-person that s/he is detained and the right to be informed in a language understood by the person detained.
All detention must be based on a written and individual decision, a file must be kept on each detainee, the right to an effective remedy must be respected and provision must be made for regular review of the legality of detention by an independent body.
According to the CPT, it is inappropriate to detain migrants in prisons or in conditions that are more restrictive than those of common law prisons. Detention must be a measure of last resort. When detention is inevitable, restriction and security measures must be minimal: free movement within centres, unrestricted contact with the outside and right to visits.

Between 20 May 1990 and 27 March 2014, **355** visits were conducted by the CPT. The reports of **306** of these visits were made public. In **34** countries, including **26** within the European Union, migrant detention sites were visited, representing a total of **120** visits.
Countries in which the CPT most often focused on administrative detention include **Greece** (**9** visits including migrant detention facilities) and **Spain** (**8** visits), followed by **Germany**, **Bulgaria**, the **Netherlands**, **Malta** and **Turkey** (**6** visits).
In these **34** countries, the CPT therefore undertook on average, one visit to migrant detention centres every **3 and a half years**. (Source : CPT)

5C Civil society denied a right of oversight

Resistance against the eviction of the squat of Cachan (Paris, France), August 2006. © Sara Prestianni

Many NGOs in the EU and at its borders have called for a right of oversight in migrant detention centres. The type of public vigilance that associations demand is complementary to the right of access of national and EU members of parliament and of certain national human rights bodies, as well as to the preventive monitoring undertaken by independent monitoring bodies (see 2.).

EU directives governing the detention of migrants provide for a right for NGOs to visit detention facilities. Although these visits can be made subject to authorisation, limits to access can only be imposed in exceptional cases, and provided that access is not thereby severely restricted or rendered impossible[1].

In this regard, it should be recalled that since 2009 the European Parliament has been calling on Member States to guarantee civil society a legal right of access to places of detention of migrants without any legal or administrative obstacles, so that their presence in detention centres is based on full legal recognition[2].

In parallel, as long as administrative detention exists, many NGOs have been calling for a right of oversight on systems for detaining migrants, including:

- → transparency: access to information and data on the existence and operation of places of detention.
- → an unconditional right of access to places of detention: to be able to enter, without prior authorisation, all premises and communicate with those working in the centres as well as individual and groups of detainees, in a confidential manner.

This access is different to the right to visit migrants deprived of liberty and to the right of NGOs to accompany parliamentary visits or to sign agreements with the responsible institutions or managing bodies in order to provide legal assistance or other "services".

The aims of such public vigilance combine the dissemination of independent information on the reality of detention and its consequences with a role of alert and denunciation of violations of the rights of detained persons.

Until today, on EU territory and at its borders, the right of oversight of civil society on places of detention remains very limited: lack of response or unsatisfactory responses to requests for figures, silence in the face of requests for access to centres or explicit refusals on dubious grounds or without any justification at all.

According to the EC[3], the transposition of Article 16§4 of the "Return" Directive – on the right of access of international and non governmental organisations – remains problematic in seven Member States, while practices are not conform in four other States. Beyond the legal framework, it is important to note that when access is granted, NGOs' right of oversight is strictly controlled by the role they are allowed to perform (social assistance, legal aid etc.), by restrictions on movement, the omnipresence of the police or prohibitions on communicating with detainees.

1
"Return" Directive (EC/115/2008), Art. 16§4; "Reception Conditions" Directive (2013/33/UE), Art. 10§4.
2
Report of the LIBE Commission on the reception conditions of asylum seekers and refugees (2008/2235(INI)), point 29 and European Parlement Resolution on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI)), point 108.
3
EC, COM(2014) 199 final, p. 23.

In relation to access to information, the European Commission itself notes that *"little quantitative data was systematically collected at Member State level... For example, data on basic parameters such as average length of detention, grounds for detention, number of failed returns, and use of entry bans proved to be available in only a limited number of Member States. Moreover, common definitions and approaches concerning data collection are frequently absent, impacting on the comparability of such data across the EU"*[1]. For NGOs which have long been denouncing the opacity surrounding places of detention of migrants and the difficulties in obtaining data on their operation, these observations of the EC raise questions. In December 2013[2], the EC referred back to the regulation on community statistics on migration and international protection[3] in which there are no statistics on these issues (number of detainees, men, women, children, average length of detention, etc.). Is this recent communication on EU return policy a sign that the EC is finally recognising the lack of transparency?

1
EC, COM(2014) 199 final, p. 14.
2
Answer [to a parliamentary question] given by Ms Malmström on behalf of the Commission (E-002523/2013), 13 May 2013
3
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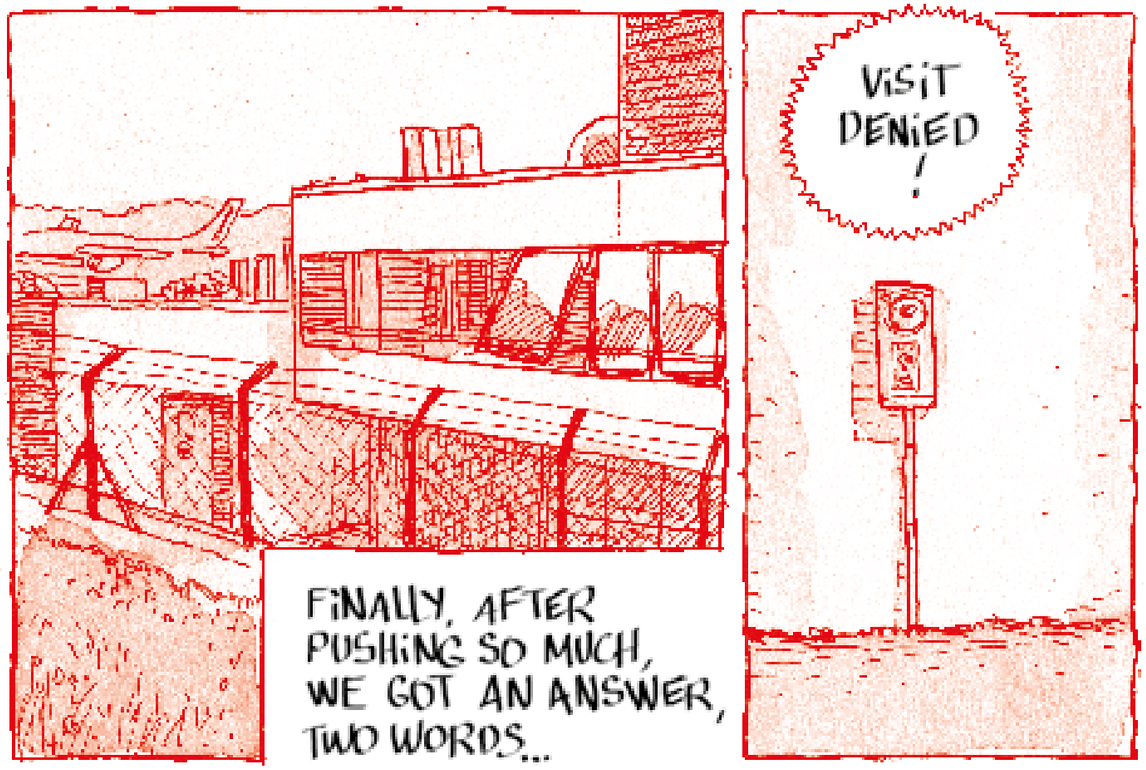

Extract of the comic book *CRA*, Des Ronds dans l'O – Meybeck 2014

5D Monitoring by the media

Access to journalists is refused – most often implicitly – on an almost systematic basis throughout the EU and at its borders, including when media request authorisation to accompany parliamentarians and/or NGOs[1].

Many journalists and NGOs have called for the principle of access for the media to places of detention of migrants to be inscribed in EU and national legal texts, in order to allow spontaneous access, without prior authorisation or accreditation and without discrimination between national and international journalists. They also claim total editorial freedom and an absence of control of written articles within the framework of this "free access".

This would re-establish journalists' role in democratic vigilance and ensure respect for the right of EU citizens to know what happens inside premises established in their name, as well as the right of detainees to communicate with the outside world.

In Italy, following public mobilisation in the LasciateCIEntrare campaign and complaints filed against obstacles to access of journalists to identification and expulsion centres (CIE), in 2013, two journalists were authorised to produce the first documentary filmed inside these sites. The objective of the documentary "EU013. L'Ultima frontiera" is to show, through the eyes of the security forces involved in managing these centres and those of the detainees, the absurdity of the system of detention, its ineffectiveness and the injustices and violations of human rights, of which thousands of migrants are victims.

A poignant illustration of the role that the media can and wants to play and which the authorities persist in hindering.

1
Open Access Now,
Reports of campaign
of visits 2012 and 2013.

Camp Free Libya (Bengazi, Libya),
June 2012. © Sara Prestianni

MEDIA : NO ADMITTANCE.

Example in Belgium : When in April 2012, the Belgian League for Human Rights (LDH) requested authorisation to visit the closed centre in Bruges with several journalists, the Immigration Office based its refusal on Article 40 of the Royal Decree of 2 August 2002 according to which "residents cannot be exposed to the curiosity of the public". Yet the second paragraph of this article provides that detainees "cannot be subjected to questions from journalists… or filmed without their consent."

Photo prise par l'association KISA lors de l'inauguration du centre de rétention de Mennogeia (Chypre) en février 2013.
Image Sébastien Marchal.

Example in Italy : In April 2011, in Italy, a ministerial circular was issued prohibiting all access to Identification and Deportation Centres (CIE) and Reception Centres for Asylum Seekers (CARA) for the press and NGOs, on the grounds of the situation of emergency created by arrivals of migrants from countries affected by the "Arab Spring", with the exception of several international organisations listed in the circular (United Nations Office of the High Commissioner for Refugees, International Organisation for Migration, Italian Red Cross, Amnesty International, Médecins Sans Frontières, Save The Children, Caritas).

Following strong mobilisation of the press and civil society under the banner "LasciateCIEntrare" (Let us in) and a change in government, the circular was annulled in December 2011. The pre-existing system – far from satisfactory and characterised by broad discretion – was re-established.

However, two journalists had already filed complaints and the administrative court of Latium issued a decision in May 2012 emphasising that "although there is not free access to detention centres, it must be regulated [and] it is clear that the exclusion of the press cannot be absolute [for all centres and for indeterminate periods] and without justification" (decision of the Regional Administrative Tribunal (TAR) of Latium, n 4518 18/05/2012). According to the reasoning of the judgement, the circular is a violation of Art. 11 of the Charter of Fundamental Rights of the European Union and the public administration had exceeded its powers.

CONCLUSION

In summary: a hugely costly system, which breaches the fundamental rights of migrants, criminalising them, often lacking effective legal safeguards, sheltered from the public eye, subject to few restrictions, over which democratic scrutiny and that of independent bodies is at a minimum, with mediocre results in terms of the stated objectives: this is the picture of administrative detention of migrants at the beginning of the 21st century, as documented by NGOs.

Yet, the European Union and its Member States are far from drawing the necessary conclusions to these findings. Worse, proclaiming themselves "managers" of migratory movements, they persist in using detention to hinder freedom of movement, as guaranteed by international law. Furthermore, they continue blindly to justify its legitimacy despite all the evidence.

The evidence: After six years of implementation of the "Return" Directive, the only EU text establishing standards in this area, the European Commission, in a report evaluating its application, welcomes the fact that "all Member States now generally accept the... policy objectives" including "respect for fundamental rights" and "fair and efficient procedures". However, in the same report, the Commission explains that it encountered "major difficulties" collecting basic data, such as the average length of detention or the grounds for detention invoked in Member States – demonstrating its very limited knowledge of the issue. It also reveals that it had to react to "striking cases of inhuman detention conditions"[1], thereby recognising that grave violations of human rights are committed and remain unpunished at the national level. In other words, the European Commission unreservedly supports a system which it admits to know little about, despite the seriousness of its consequences.

Is it therefore surprising that there are regular revolts (riots, fires, demonstrations) and gestures of despair (hunger strikes, suicide attempts, acts of self-mutilation) in these places of detention of migrants? In the face of a denial of justice, arbitrariness, deprivation of contact with the outside world and the silence of the authorities, these acts are often the only means of expression of those detained. They speak of their suffering, their incomprehension and their refusal to be deprived of liberty on the sole ground that they do not find themselves on the "right side" of the border.

As long as camps for migrants exist, we have to be the vigourous spokespersons of this refusal. Members of the Open Access Now campaign ask governments of the EU Member States and of its neighboring countries to stop use of detention to purposes of immigration control[2].

1
EC, COM(2014) 199 final, 28 mars 2014.

2
Migreurop, "For the closure of camps of migrants in Europe and beyond", 2010.

Manifestation of the f
of migrants lost at sea
June 2012. © Sara Pre

Photo ANSA/Alessandro Di Meo

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epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home
OPCAT Data base apt.ch/en/opcat-database

> Campaigns

"CIEs NO. Campaña por el cierre de los centros de internamiento de extranjeros" ciesno.wordpress.com
"End child detention" endchilddetention.org
"LasciateCIEntrare" www.lasciatecientrare.it
"Open Access Now!" www.openaccessnow.eu

> Institutions

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) www.cpt.coe.int/fr

> Organisations and networks

Members of the campaign "Open Access Now!":
European Alternatives www.euroalter.com
Anafé (France) www.anafe.org
Arci (Italy) www.arci.it
Ciré (Belgium) www.cire.be
Frontiers Ruwad (Lebanon) www.frontiersruwad.org
La Cimade (France) www.lacimade.org
Ligue des Droits des l'Hommes (Belgium) www.liguedh.be
Migreurop www.migreurop.org
Sos Racismo (Espagne) www.mugak.eu

Other quoted organisations :
Association for the prevention of torture www.apt.ch
Bulgarian Helsinki Committee
www.bghelsinki.org/en/rights/refugees-and-migrants
Campaign to close Campsfield closecampsfield.wordpress.com
International Detention Coalition idcoalition.org

> Projets

"A face to the story: the issue of unreturnable migrants in detention"
pointofnoreturn.eu
Dynamic and interactive mapping of migrant detention in Europe and beyond
closethecamps.org
Global detention project www.globaldetentionproject.org

CREDITS

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