

19 June 2017

EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ)
CONDITIONS OF ADMINISTRATIVE DETENTION OF MIGRANTS

HEARING OF KEY STAKEHOLDERS AND CIVIL SOCIETY

22-23 June 2017

Strasbourg, Council of Europe
Agora Building, Room G.01

Pointers for discussion

Introduction

1. The Council of Europe is currently preparing a draft legal instrument of the Committee of Ministers to member States on European rules on the conditions of administrative detention of migrants. Under the auspices of the European Committee on Legal Co-operation (CDCJ), the Committee of experts on the Administrative Detention of Migrants (CJ-DAM) is carrying out a codifying exercise on a detailed set of immigration detention rules based on existing international and regional human rights standards relating to the conditions of detention of migrants.

2. **This exercise is limited to codifying existing standards on administrative detention of migrants and is not intended to develop new standards. The discussions at the Hearing on 22-23 June will not go beyond this mandate.**

3. The codification into a single and specific instrument offering a coherent and clear set of international rules on the conditions of detention of migrants would avoid the risk of diverging legal regimes and help build universally applicable standards. This draft legal instrument would emphasise on relevant individual guarantees on the conditions administrative detention of migrants held in and provide further guidance to national authorities responsible for the closed centres.

4. Provisions of this draft instrument are mainly focused on the conditions of detention such as: accommodation, health and welfare, security, legal remedies, language assistance, communication with the outside world, legal representation, degree of restrictions on liberty, appropriateness of detention facilities.

Modalities of the hearing

5. This hearing is organised in the framework of the consultation process which aims to involve key actors and civil society in the elaboration of the draft codifying instrument, by consulting them on the draft text before finalising its preparation.

6. Participants to the hearing will be most welcome to share their views and experiences and to provide input on issues to be addressed, in particular if they consider that other existing relevant standards relating to the conditions of administrative detention of migrants must be taken into consideration.

7. Each session will be led by a moderator who will be responsible for directing the discussion, reframing the debate, and time management. A meeting rapporteur will take notes of the views expressed by the participants and will present his concluding remarks at the end of the hearing. His report will be transmitted to the CJ-DAM and the CDCJ responsible for the preparation of the draft text.

8. To facilitate the exchange of views, certain issues are highlighted below. **The latter are pointers only, participants will be welcome to raise other items they consider relevant.** The topics to be discussed have been regrouped under different but complementary themes. Participants may therefore be called upon to share their views on these issues from the different angles of the themes covered.

Session 1

Scope, structure, standards to be codified and their practical implementation

9. The rules apply to the conditions of administrative detention of migrants. The sources of the standards that have been codified are indicated in the footnotes to the draft codifying instrument.¹ These standards have been codified in the form of rules addressed to member States and their relevant competent authorities, which, in many cases are those responsible for the day-to-day running of administrative detention centres for migrants. The European Prison Rules have been used as a model for the structure of the draft codifying instrument.

- ❖ In general, are all key standards (including both legally binding and non-binding standards) correctly reflected? Have any key standards been omitted?
- ❖ Are there any standards that should not be codified and if so for what reason?
- ❖ Is the scope of application sufficiently well defined in the draft text? Are the definitions clear and accurate? Should other terms be defined?
- ❖ Is the structure of the draft codifying instrument appropriate? Is the level of detail in the rules appropriate for their effective application?

Guarantees and protection

10. Migrants held in administrative detention have rights and are entitled to protection. These rights concern not only their material conditions but also the procedures governing their detention and the means of challenging their detention and conditions under which they are held. Both aspects are covered in the draft codifying instrument.

- ❖ Are all relevant guarantees and protections adequately reflected in the draft codifying instrument, particularly in the areas of material conditions, personal development, health care, legal remedies and detention procedures?
- ❖ Do the various rules in the draft codifying instrument (e.g. in the areas of personal development and education) adequately correspond with the variable and imprecise periods of time (long or short) during which migrants can be held in administrative detention? What, if any, could be the practical difficulties?

¹ A full list of the international instruments and other sources from which they have been drawn, including judgments of the European Court of Human Rights, appears in document CJ-DAM(2017)8.

- ❖ Are there any existing standards that are too restrictive of migrants' rights in administrative detention particularly in the context of maintaining order and security within the closed detention centre? If so, which are these standards and how might they be reformulated whilst still respecting the spirit of the codification process?
- ❖ In relation to requests and complaints, what should be the specific requirements of the competent authority responsible for dealing with requests or investigating complaints, particularly complaints of ill-treatment? What forms of protection and assistance might a migrant be entitled to seek?
- ❖ In the area of health care, do the various rules in the draft codifying instrument adequately reflect the diversity of health care systems in the member States whilst correctly reflecting existing international standards in relation to health care for migrants in administrative detention?

Session 2

Administrative detention in other places than closed centres

11. The codified rules relate only to closed detention centres. In exceptional circumstances, migrants may be held in other places, referred to as “temporary holding facilities”. These may include prisons and police stations – situations which are addressed by the codifying rules, but also transit zones, including airport lounges, which are not.

- ❖ What, in light of existing international standards, are the guarantees and protections for migrants held in temporary holding facilities? Do these guarantees and protections vary as between different types of temporary holding facilities and, if so, how?
- ❖ Should the draft codifying instrument include these standards on the administrative detention of migrants in temporary holding facilities? If so, in relation to which types of facility and how should they be reflected in the overall structure of the draft instrument?
- ❖ What would be the practical implications of codifying standards in relation to temporary holding facilities (in terms of human resources, accommodations, health care, etc.)?
- ❖ Would codifying these standards create the risk of regulating exceptional or even unlawful situations and thus legitimising them?

Avoiding a prison-like environment

12. In every closed centre, individuals should feel safe and internal rules must be introduced and respected. In this context, it is easy for the regime in an administrative detention for migrants to resemble a prison but there are fundamental differences between them that need to be respected. Migrants in administrative detention are not detained on a criminal basis and should enjoy a more privileged position than inmates in prisons. As the draft codifying instrument has adopted a similar structure to that of the European Prison Rules, there is a risk that it has unintentionally introduced provisions that are more appropriate to a prison rather than to an administrative detention centre for migrants.

- ❖ Does the draft instrument achieve the correct balance between the principle of avoiding a prison-like environment and the rules on maintaining good order, safety and discipline?
- ❖ Which rules in the draft codifying instrument, if any, might not be appropriate for the administrative detention of migrants?
- ❖ What other provisions, based on existing international standards, might be considered with a view to better avoiding a prison-like environment?
- ❖ How might the draft text be further improved in this respect?
- ❖ Given the specificity of administrative detention centres for migrants in contrast to prison regimes, what in light of existing standards should be the key mission, tasks and qualifications of staff? How should their performance be monitored?
- ❖ Concerning communication with the outside world, do the rules in the draft codifying instrument strike the right balance between reconciling the right of migrants to communicate with the outside world and receive visits with the need to maintain good order and security within the detention centre? Do existing standards provide for other facilities (e.g. for private family visits (with children) or conjugal visits)?

Session 3

Persons in a specific situation of vulnerability

13. The administrative detention of persons in a specific vulnerable situation is particularly sensitive. The draft codifying instrument is based on the assumption that all migrants held in closed centres are vulnerable. There are no separate sections in the instrument for different vulnerable groups. Instead, the provisions relating to migrants in certain situations of vulnerability (e.g. children, victims of trafficking, people with disabilities) have been integrated throughout the draft text as appropriate. Their detention should be a measure of last resort and the administrative authorities should screen migrants in order to assess their specific needs due to their particular vulnerability.

- ❖ Does the draft codifying instrument create a risk of “normalising” exceptional situations, i.e. making the detention of the migrants concerned more acceptable and, if so, how could this risk be avoided?
- ❖ Does the draft codifying instrument take into account all situations of vulnerability covered by existing international standards?
- ❖ Is the approach taken in not having separate sections in the draft codifying instrument on the relevant standards in relation to migrants in vulnerable situations appropriate?
- ❖ Have any standards been codified that are not appropriate in the context of the administrative detention of migrants in situations of vulnerability?
- ❖ Does the draft codifying instrument make a sufficiently clear distinction between migrants in general and those migrants who are in a situation of particular vulnerability? Is this distinction workable for the administrative authorities?
- ❖ Are the provisions relating to the screening of migrants in order to determine their possible vulnerability sufficient? How might the competent authorities more effectively assess the particular needs of individual migrants, and ensure that their conditions of detention are appropriate to these needs? When should the screening take place and at what intervals?
- ❖ What specific arrangements should be made when children are held in administrative detention? What could be the alternatives?
- ❖ Does the draft codifying instrument sufficiently take into consideration the increased risk of vulnerability which women held in administrative detention may face? Does it take in account sufficiently the specific needs of these women?