

22 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

OPENING REMARKS

by Ambassador Tomáš Boček,

Special representative of the Secretary General for migration and refugees

Dear Chair, dear participants,

I would like to thank you for the opportunity to engage with you today. I had also been invited to open the first meeting of CJ-DAM last year, which I did with great pleasure. And I am happy to see how much progress has been made. So I would like to begin by thanking all the members of the committee for the great work they have done so far.

They should be congratulated for a very clear, well-structured and well-written draft, attempting to codify the various rules we have in Europe for the administrative detention of migrants.

Since my appointment in February 2016, I have visited many such places of detention. In the face of very high number of arrivals, the authorities seem to forget the need to privilege non-custodial measures. They also seem to overlook the non-punitive nature of migration detention. What is worse, several detained migrants and NGOs report to me that detention is sometimes used as a deterrent measure.

How far is all this compatible with respect for the right to liberty?

Some of the situations I have encountered during my missions make me think about this question. I will give you some concrete examples: Greek law does not consider that migrants in the hotspots are deprived of their liberty. Reality, however, is different and this has consequences for the exercise of their right to seek a remedy. Similar issues arise in Italy concerning the legal framework within which hotspots function today; also concerning the power to inspect these places.

In Turkey, detainees' access to counsel appears problematic. And this in its turn has an impact on their access to procedures for refugee protection. During my fact-finding mission to two transit zones in Hungary last week, several migrants I met told me that they felt like they were in prison. A common complaint is that migrants are not informed of the reasons for their detention.

In the light of all the above, who can complain about the decision taken by the Council of Europe to look for ways of assisting its member states with the administrative detention of migrants?

Let me remind you that our Organisation has taken two initiatives in this connection: CJ-DAM has been asked to do its codification work and another committee was tasked by the CDDH with providing guidance on alternatives to migration detention. The two are inseparable and should be seen as part of a package aiming at safeguarding the right to liberty of migrants.

We should never forget that detention is a measure of last recourse. And places of detention that comply with high standards often make alternatives to detention a more realistic solution.

The legality of detention is not the only problem I have encountered during my missions. It was also clear to me that improvements were required to the material conditions in most places.

European standards are indeed needed for all places where migrants are accommodated. Therefore, I see the CJ-DAM exercise as part of a comprehensive response that would also involve, for example, rules for children accommodated with others in open camps. This is already part of the Council of Europe Action Plan on Protection of Refugee and Migrant Children. Also rules for the special facilities for unaccompanied children on which other European agencies have been working.

We also need rules for places that are not designated as detention facilities by member states but where people are de facto deprived of their liberty.

As regards vulnerable groups, the main objective should be doing away with their detention.

I have repeatedly stated that migration detention is never in the best interests of the child. I have done so in my thematic report on refugee and migrant children and in my reports on the fact-finding missions. Detaining children has serious consequences for their health and well-being.

The Action Plan I have already mentioned contains a series of measures that are meant to help states avoid resorting to the deprivation of liberty of children on the sole ground of their migration status.

However, until this ideal stage is reached in all member states, we must make sure that vulnerable people who are unfortunately deprived of their liberty are properly treated.

I think therefore that today's meeting is a good opportunity to discuss what the best line to take is: No rules for the detention of vulnerable groups at all? Or solid human-rights inspired rules to ensure protection for those who are exceptionally detained until this is abolished?

I have also been informed that there is some uneasiness about the references to the European Prison Rules (EPR) in the draft. This is understandable. At the same time, we should not forget that the EPR make a distinction between deprivation of liberty, which is the punishment, and the conditions of detention, which should not be punitive. They also apply to remand prisoners, i.e. people who are presumed innocent. So let us all stop and think whether the EPR, when seen in this light, are relevant for the DAM exercise or not.

The draft has a human-rights focus, as it should. The right to liberty and to freedom from inhuman and degrading treatment are expressly mentioned. I would also like to emphasise the rights to safety and dignity of migrants in detention. And the special duty of care that goes with them.

The draft also has a chapter on inspection. Its importance cannot be stressed sufficiently. Inspection procedures are usually complemented by complaints mechanism in detention places. Their aim is to protect not only against ill-treatment and other forms of abusive

behaviour but also against any kind of breach of the relevant rules. And complaints mechanisms should be surrounded by appropriate procedural safeguards.

But let me stop here – because I have realised that I have started talking about the substance, which was not perhaps what was expected from someone invited to provide some opening remarks.

I got carried away because I believe that this consultation exercise, involving all major stakeholders, provides us with an excellent opportunity to improve the draft in many significant ways. I started by congratulating the drafters on their work. We all know very well that there is time for work and time for listening ... My colleagues from my Office are here to listen as well. And after listening we hope that we will also provide written comments.

I truly hope that the end product of CJ-DAM will be a good working tool for my office and other Council of Europe mechanisms to be used during future fact-finding missions.

Also that it will provide solid guidance to our member states in a very sensitive field.

And finally that it will contribute to increased safety for migrants, especially migrant children, and enhanced respect for their human rights. Thank you very much!