

HUMAN RIGHTS EDUCATION FOR LEGAL PROFESSIONALS

COUNCIL OF EUROPE



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Alternatives to Immigration Detention

HELP
Human Rights Education
for Legal Professionals



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HELP/UNHCR: Alternatives to Immigration Detention

Based on:

- **CoE Steering Committee for Human Rights (CDDH) *Analysis on the legal & practical aspects of effective alternatives to detention in context of migration + Practical Guide***
- Other CoE resources (e.g. module in **HELP course on refugee and migrant children**) + *key insights from a 2019 EU-CoE-ENM HL [Conference](#) on ATID*
- Developed jointly by the CoE (IHRB Division + HELP) and UNHCR
- Under the **CoE Action Plan on protecting refugee and migrant children** with the support of the Office of the Special Representative

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Welcome to the HELP/UNHCR course on Alternatives to Immigration Detention

Why this course?

The requirement to detain immigrants in international legal frameworks

Recent years have seen how alternatives can enab over-reliance on depriv increased interest, how applied. Sometimes legis is also a need for greater applying alternatives effe

This course, therefore, a aspects of alternatives to

Modules 1 and 2 focus m and 4 address the wider For those who want to be highly recommended as t

VIDEO ABOUT THE CO

Why Alternatives to Immigration Detention?

< Show video transcript

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Click in the images on the right to read more content.

HELP/UNHCR: Alternatives to Immigration Detention

Contents:

1. Legal and Practical Basics
2. Legal Framework
3. What Possible Types of Alternatives?
4. How to Make Alternatives effective?

Developed in 2020



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This first module deals with **three basic questions**

The right to liberty

ART. 5.1 OF EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

ART. 9.1 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

ART. 6 OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (EU CHARTER)

ART. 2 PROT. NO 4 TO THE ECHR ON FREEDOM OF MOVEMENT

Alternatives to immigration detention

Non-custodial measures that re

Overall, there is broad consensus alternatives to immigration detention are **non-custodial measures** respect human rights and a individual options other than detent

Benefits of Alternatives to Immigration Detention



Respecting the rights and needs of individuals



Ensuring compliance with immigration procedures



Promoting cost-effectiveness

- prompt and fair case resolution
- facilitating voluntary and/or enforced returns
- reducing absconding



The legal framework of alternatives is characterised by the following

THE RIGHT TO LIBERTY VULNERABILITY CHILDREN HUMAN RIGHTS GUARANTEES

Detention under Article 5.1 (f)

This provision properly deals with (hereafter: first and second limb).

The lawful arrest or detention:

Click in the buttons below

First limb... "of a person to prevent his effecting an unauthorised entry into the country"

Second limb... "of a person against whom action is being taken with a view to deportation or extradition"

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Obligation to consider alternatives

Overall, there is no need for particular vulnerability under the domestic law. References to national laws provide for then there must be conform national laws in order [Austria](#), paras. 54-58).

Similarly, in a case of that there must be conform (such as any requirement person was frustrating alternative, less string expulsion order could be detention not to be arbit

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Introduction

Vulnerability is a distinct legal concept which has been developed over the last decades. It has an important place in the human rights debate and takes on particular significance in the context of detention.

The ECtHR has repeatedly pointed out that some individuals or groups are more vulnerable than others and **require special care and protection**. This has been echoed by various human rights bodies and is clearly reflected in EU law.

(Click on image)

The elderly



Persons with disabilities



LGBTI persons



Pregnant women and nursing mothers

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Detention and the best interests of the child

Given the **extreme vulnerability of children** and the **negative impact that immigration detention has on them**, the Committee on the Rights of the Child together with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) concluded that the possibility of detaining children as a **measure of last resort is not applicable** in immigration proceedings.

Therefore, **child and family immigration detention should be prohibited by law** and its **abolishment ensured in policy and practice**.



Click on the image

What are the immigration deriving from



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The what and the how of alternatives

A wide range of accommodation and appropriate scale. They are thus used with

Existing practices and how on the different alternative. However, "type" or "combination" elements are upheld importance in ensuring

Additionally, the design based on both the practical model that is important. States are or/and develop types

Ultimately, **HOW** is

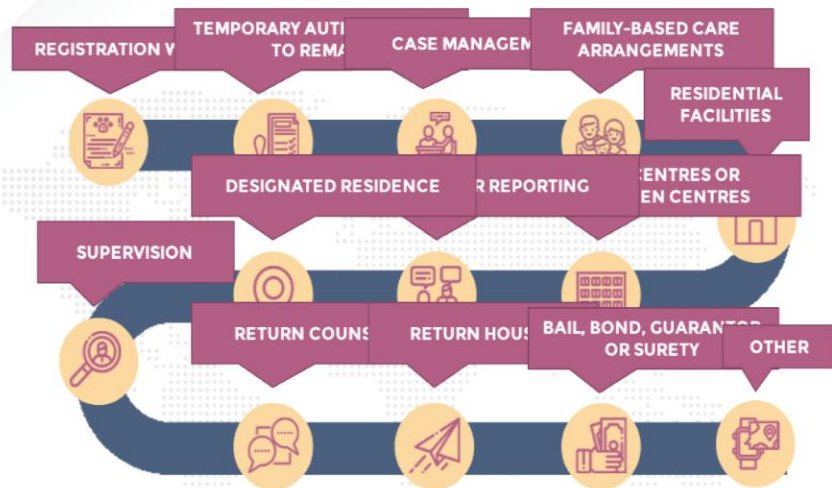
Summary

What possible types

In this Module you have learnt that

- Alternatives take various forms of conditions.
- The least intrusive measure possible vulnerabilities of the person concerned.
- There is no simple menu of options.
- A wide range of alternatives accommodation and different may increase the number of people that alternatives are used with.
- The design of effective alternatives or regional context; there is no country (Explore also Module implement alternatives effectively).

Possible types of alternatives



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Essential elements of effective implementation

The ways in which alternatives are implemented are crucial to the success of an alternative chosen. How certain processes are implemented can affect the effectiveness of an alternative.

The following processes have been identified as essential for the effective implementation of alternatives to immigration detention.

Discover why these elements are important for the effective implementation of alternatives to immigration detention.



HOW to make ATID effective in a specific national context?



Monitoring and evaluating results

Monitoring and evaluation are essential processes.

Monitoring is the systematic collection of information about the efficiency of an alternative during monitoring is used to assess the effectiveness of an alternative.

Evaluation is a more comprehensive process that assesses whether a programme has met its objectives, and as a result, improvement, and as a result, completion.

There is no particular monitoring and monitoring frameworks for alternatives to immigration detention, but international practice.

Implementing alternatives

This section explores some key questions and potential steps that may be considered when implementing alternatives to immigration detention. Please click on each box to learn more.



Scoping your national context

This section explores some of the key questions and potential steps that may be considered when scoping each national context.

Click on the different numbers to learn more about each step





Migration Specific Courses



ASYLUM



REFUGEE AND MIGRANT CHILDREN



ALTERNATIVES TO IMMIGRATION DETENTION

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- HELP course on the [Committee on the Prevention of Torture \(CPT\) standards](#), which includes a module on immigration detention'.



CPT Standards

Immigration detention

Start

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CPT Standards: Immigration detention



3/45

Introduction

Immigration detention is one of the **primary areas** of the work of the CPT. It has carried out hundreds of visits to places of immigration detention and has developed a detailed set of standards.

The CPT's standards are based on its own findings and observations during visits in places of deprivation of liberty. They also build on legal principles originating from international (human rights) instruments, such as the European Convention on Human Rights (ECHR) and relevant United Nations (UN) treaties. CPT standards also influence the development of new instruments at international level, such as the 2008 European Union (EU) Return Directive.¹

¹ 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. The Directive applies to all European Union Member States except the United Kingdom and Ireland. To the extent that it applies to those who enter the territory without authorization, it applies to Denmark and the Schengen associates (Iceland, Liechtenstein, Norway and Switzerland).

1/4



Learning Objectives

Read more



ECtHR-HELP video with Court's jurisprudence on matters of asylum

Asylum

This 25-minutes video sets out the Court's jurisprudence in matters of asylum.

Videos

- | | | |
|----------|------------|-----------|
| Croatian | Greek | Russian |
| English | Italian | Serbian |
| French | Macedonian | Spanish |
| German | Romanian | Turkish |
| | | Ukrainian |



(ENG) ECHR - COURTtalks-disCOURs Asylum (English version)



Thank you for your attention

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*Good Training for
Good Judgments*

<http://help.elearning.ext.coe.int/>

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