BEHIND CLOSED DOORS?
DETENTION OF IRREGULAR MIGRANTS,
HUMAN RIGHTS VIOLATIONS AND
MONITORING MECHANISMS

Student: Maria Elena Caruso
Supervisor: Prof. Jenny Goldschmidt

Academic Year 2009/2010
Abstract

This study investigates the human rights implications of the administrative detention of irregular migrants within the European Union and looks for a possible way to prevent violations in detention centres, with a specific attention on torture and inhumane and degrading treatment.

It examines, first of all, the European policies on fight against irregular migration, putting in evidence eventual gaps between theoretical standards of respect of human rights and practical policies, tending to criminalize irregular migrants. It focuses, in particular, on European policies on migrant detention, analysing the legal framework at the European level and drawing a general overview of the detention centres in Europe.

Then, the study pays specific attention to the human rights implications of migrant detention: it examines the standards for the protection of migrants’ rights States are bound to respect and analyses the human rights violations that can occur in detention centres, with a particular focus on torture and ill treatment both regarding condition of detention and return procedures.

It shows, finally, how monitoring place of detention through a system of periodic visits, both at national and international level, can have an added value to assure respect of fundamental rights for migrants in administrative detention.
List of Abbreviations

CAT  Convention Against Torture
CEDAW  Convention on the Elimination of All Forms of Discrimination against Women
CPT  Committee for the Prevention of torture
CRC  Convention on the Rights of the Child
ECtHR  European Court of Human Rights
FRA  Fundamental Rights Agency
ICERD  International Convention on the Elimination of Racial Discrimination
ICCPR  International Covenant on Civil and Political Rights
ICESCR  International Covenant on Economic, Social and Cultural Rights
ICRMW  International Convention on the Protection of the Rights of All Migrant Workers and members of their families
NPM  National Preventive Mechanisms
OP-CAT  Optional Protocol to the Convention against Torture and Other Cruel, Or degrading treatment or punishment
SPT  Subcommittee for the Prevention of torture
UDHR  Universal Declaration of Human Rights
UE  European Union
Table of Contents

- Introduction: irregular migration, detention and human rights ...........................1

1- Irregular migration in Europe: general background

  1.1 Europe, place of immigration .................................................................6
  1.2 Irregular migration in the European Union .............................................8
  1.3 Making people “illegal”: criminalization of migrants in the political debate .......9

2- European policies on irregular migration

  2.1. An “Area of Freedom, Security and Justice”. For whom?
        European policies on migration management ........................................12
  2.2 European Union policies on fight against irregular migration ....................17
  2.3 European Union policies on migrant detention ........................................21

3- Administrative detention of irregular migrants in Europe

  3.1 Growth and evolution of administrative detention practice .........................24
  3.2 A typology of different types of detention centres ...................................27
  3.3 Migrants’ detention camps in Europe .....................................................31

4- Migrant detention and human rights: two compatible concepts?

  4.1 Migration and human rights: international and regional legal framework .......34
  4.2 Human rights standards relevant to migrant detention
        4.2.1 Is the administrative detention in itself compatible with respect of human rights? .........................................................39
        4.2.2 Human rights standards concerning detention conditions: which are the duties for the States to protect irregular migrants? ..............41
  4.3 Human rights violations in migrant detention centres: torture and ill treatment related to conditions of detention and return procedures .................45
5- Monitoring and preventing torture and ill treatment in migrant detention centres

5.1 Preventing torture and ill treatment in detention: international and regional legal framework
5.1.1 Torture and ill treatment: constitutive elements .................................................. 52
5.1.2 International and regional hr law on the prohibition of torture and ill treatment ............................................. 54

5.2 Monitoring bodies: from a repressive to a preventive approach
5.2.1 The importance of monitoring condition of detention ............................................. 56
5.2.2 Visiting mechanisms: national, regional and international level ............................. 58

5.3 Visits by monitoring mechanisms as a mean of greater protection for migrants in detention centres
5.3.1 The Optional Protocol to the Convention Against Torture and the detention of migrants .................................................. 66
5.3.2 The CPT’s role in monitoring migrants’ rights in detention and expulsion procedures ........................................................................ 69

Conclusions .................................................................................................................. 74

Bibliography ................................................................................................................ 79

Annexes ....................................................................................................................... 89
- Global Status of OPCAT Ratification
- Designated National Preventive Mechanisms under OPCAT
2010

Behind closed doors? : detention of irregular migrants, human rights violations and monitoring mechanisms

Caruso, Maria Elena

https://doi.org/20.500.11825/1037

Downloaded from Open Knowledge Repository, Global Campus’ institutional repository