

Detention of irregular migrants prior to removal in the EU Mediterranean member states.

Adjusting the focus: Alternatives to detention.

Silvia Gómez Moradillo

Thesis supervised by

Prof. DDr. Renate Kicker

**European Training and Research Centre on Human Rights and Democracy
(ETC-Uni Graz) and Institute of International Law and International
Relations**

University of Graz

Academic Year

2011/2012

ABSTRACT

The continuously denounced inhumane conditions of detention centres for irregular migrants prior to removal in the EU Mediterranean member states should be a primary matter of concern both for the states involved and for the EU itself, and efforts should be made trying to find the most effective methods of addressing them. In an attempt to make a practical contribution on the issue, this thesis, after assessing the fundamental human rights standards applicable to the administrative detention of irregular migrants during procedures with a view to their removal, develops the hypothesis that the most effective way to improve conditions in detention centres while respecting the human rights of irregular migrants is to place the focus on a primary human rights standard: the use of detention as an exceptional measure of last resort and the comprehensive provision for alternatives to detention. Instances of automatic detention and of inhuman conditions of detention have been systematically observed in the practices of Spain, Malta, Italy, Greece and Cyprus, as demonstrated in this thesis. Moreover, alternatives to detention are neither used nor provided for by the domestic legislation of these states. In light of the hypothesis elaborated throughout this thesis, EU Mediterranean member states urgently need to place the focus on using alternatives to the detention of irregular migrants in the context of removal procedures. Furthermore, as the issue clearly remains an EU one, the EU itself must play a greater role in helping them to properly implement alternatives to detention, an idea further developed in the last part of this thesis matched with a proposed solution using the Return Directive as the fundamental tool.

ACRONYMS

AFSJ:	European Union Area of Freedom, Security and Justice.
CAT:	United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
CIEs:	Spanish detention centres for irregular migrants (Centros de Internamiento de Extranjeros).
CoE:	Council of Europe.
CPT:	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
ECHR:	European Convention for the Protection of Human Rights and Fundamental Freedoms.
ECPT:	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
ECtHR:	European Court of Human Rights.
EU:	European Union.
FRA:	European Union Agency for Fundamental Rights.
HRC:	United Nations Human Rights Committee.
ICCPR:	International Covenant on Civil and Political Rights.
NGOs:	Non-governmental organisations.
OPCAT:	Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
PACE:	Parliamentary Assembly of the Council of Europe.
PGA:	Spanish Public General Act.
TEU:	Treaty on European Union.
UN:	United Nations.

TABLE OF CONTENTS

1	Introduction	8
2	Starting from the beginning: Human rights standards for the detention of irregular migrants prior to removal	13
2.1	<u>United Nations framework</u>	15
2.1.1	Human rights standards for the detention of irregular migrants	15
2.1.1.1	Irregular migrants' entitlement to human rights	15
2.1.1.2	Right to liberty and security: Prohibition of arbitrary detention	17
2.1.1.3	Detention of irregular migrants: the last resort	18
2.1.1.4	Material conditions of detention: Prohibition of torture or other cruel, inhuman or degrading treatment or punishment	20
2.2	<u>Council of Europe framework</u>	23
2.2.1	Human rights standards for the detention of irregular migrants	23
2.2.1.1	Irregular migrants' entitlement to human rights	23
2.2.1.2	Right to liberty and security: Prohibition of arbitrary detention	25
2.2.1.3	Detention of irregular migrants: the last resort	27
2.2.1.4	Material conditions of detention: Prohibition of torture or inhuman or degrading treatment or punishment.....	29
3	Placing the focus: The EU and the detention of irregular migrants prior to removal	35
3.1	<u>The EU legal framework</u>	36
3.1.1	Directive 2008/115/EC of 16 December 2008: the Return Directive	37
3.1.1.1	Human rights provisions.....	38
3.1.1.2	Detention as a measure of last resort and alternatives to detention	40
3.1.1.3	Material conditions of detention	41
3.2	<u>EU Member states implementation</u>	42

4 Mapping the terrain: Detention of irregular migrants in the EU member states of the Mediterranean border	44
4.1 <u>Case Study: Spain</u>	44
4.1.1 Detention of irregular migrants prior to removal.....	45
4.1.2 Material conditions of detention	46
4.1.3 Detention as a measure of last resort and alternatives to detention.....	54
4.2 <u>Other EU Mediterranean member states: Malta, Italy, Greece and Cyprus</u>	59
4.2.1 Material conditions of detention.	60
4.2.2 Detention as a measure of last resort and alternatives to detention	61
5 Adjusting the focus: alternatives to detention	64
5.1 <u>Positive implications of alternatives to detention</u>	64
6 One step forward: The EU’s greater involvement in helping to implement alternatives to detention	69
6.1 <u>Grounding the necessity of EU’s greater involvement</u>	69
6.2 <u>Rethinking the Return Directive</u>	73
6.2.1 Proposal for a new article: “Alternatives to Detention”	74
7 Conclusion	81
Bibliography	86