



ADMINISTRATIVE DETENTION OF ASYLUM SEEKERS AND IRREGULAR MIGRANTS IN EUROPE

Common position of JRS in Europe

March 2008

Mission Statement

Millions of refugees and migrants flee persecution, armed conflict, poverty or natural disasters in their homeland where they can no longer find safety and security. Tens of thousands find their way to Europe each year seeking protection and assistance. Jesuit Refugee Service Europe shares the mission of JRS International, which is to accompany forcibly displaced persons, to serve them, and to advocate their cause. JRS takes its inspiration from the Gospel values of justice and steadfast love for those most marginalized. It is guided by the social teachings of the Catholic Church.

JRS Europe aims to provide effective assistance to forced migrants in Europe, to advocate respectful and fair treatment of all migrants affected by European policy, and to defend access to procedures that guarantee the realization of basic human rights in full accord with international treaties. It carries out this work in collaboration with JRS offices around the world, with other churches and faiths, and with civil organizations committed to the cause of refugees and forcibly displaced people. JRS Europe has particular solicitude for those whose needs are most urgent and for those who are simply forgotten.

The members of JRS in Europe have taken into consideration:

The 1948 Universal Declaration of Human Rights

The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, with Protocols Nos. 1, 4, 6, 7, 12 and 13

The 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol Relating to the Status of Refugees

The 1966 International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights

The 1989 Convention on the Rights of the Child

The 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers

The 2005 Guidelines of the Committee of Ministers of the Council of Europe on Forced Return Including Detention Upon Removal

The ongoing jurisprudence of the European Court of Human Rights

For the purposes of this position paper, and within the context of its work, the members of JRS in Europe agree to the following definition of ‘administrative detention’:

A situation in which a third-country national is confined within a narrowly bounded or restricted location, and where he or she experiences a deprivation of liberty; this measure must be for administrative reasons and not a measure of the criminal justice system.

The positions enumerated below shall apply to the administrative detention of asylum seekers and irregular migrants while they are in the State’s territory, or prior to being admitted onto the State’s territory.

The members of JRS in Europe agree to the following principles:

- A. Anyone who is fleeing from severe human rights violations has an inalienable right to seek protection in another country,
- B. Individuals and their families shall not be punished, administratively or criminally, for submitting an asylum claim by the national authorities of the country to which they seek protection,
- C. Authorities of the countries of reception shall take the utmost care to provide for the well-being and safety of asylum applicants,
- D. Children who seek asylum in another country, whether they are accompanied or not, and by reasons of their physical and mental vulnerability, require the provision of special safeguards and care, including appropriate legal protection and the unity of the family, as to the extent that it is in the best interest of the child.

The members of JRS in Europe agree to the following positions:

1. No asylum seeker shall be detained during his or her asylum procedure.
2. Administrative detention shall not be used as a deterrent against persons who seek asylum.
3. Administrative detention of irregular migrants shall be avoided to the utmost extent possible.
4. If detention cannot be avoided, it should be only used in accordance with the principle of proportionality.
5. Legislation shall provide for, and policy makers shall implement, alternatives to detention that respect human dignity and fundamental human rights.
6. Families with children shall not be detained in closed detention centres. Family unity shall be maintained at all times, as long as it is in the best interest of the child. Alternatives to detention must be found in the case of families.
7. Unaccompanied minors, including age-disputed minors, shall never be detained.
8. Vulnerable persons such as minors, pregnant and lactating women, traumatised persons, persons with special physical or mental health needs, persons older than 65 years and chronically or seriously ill persons, shall never be detained.
9. A person may be detained only if there has been a prior decision by an independent judicial authority. If a prior judicial decision cannot be obtained, the person's detention shall be subject to an automatic review before a judicial body that is readily accessible and effective, at a time not exceeding 48 hours after the detention measure is ordered. The detention order shall be subject to subsequent automatic reviews by a judicial authority at least once every 30 days.
10. Detainees shall be provided with timely and free legal assistance that meets a sufficient quality standard, and shall be immediately informed of the reasons for his or her detention and the legal means of challenging the detention order, in a language the person understands. The costs for competent professional interpretation shall be covered by the State.
 11. Administrative detention shall be as short as possible, and in every case, shall not exceed two months.
 12. Living conditions in detention centres such as nutrition, accommodation, access to health care, privacy, telephone and access to indoor as well as outdoor activities, shall comply with basic human rights standards and should not resemble a prison-like environment. Detainees shall have access to education and shall be able to practise their religion.
 13. Detainees shall have the right to receive visits from the outside world, including social, familial and pastoral visits. Detainees shall also have the right to contact the outside world by telephone or by mail. Simultaneously, representatives of relevant non-governmental organisations and of the United Nations High Commissioner for Refugees (UNHCR) shall be granted access to detention facilities without being required to name a particular person they want to see.
 14. EU and national monitoring mechanisms and bodies shall be established to independently monitor the use of administrative detention for asylum seekers and irregular migrants, and to inspect places of administrative detention.