The Eastern Partnership (EaP) Panel on Migration and Asylum expert meeting on immigration detention took place in Chisinau on 26-27 March 2014. The meeting was organized jointly by Moldova and Sweden, and gathered experts from five Eastern Partnership (EaP) countries (Armenia, Azerbaijan, Georgia, Moldova and Ukraine) as well as from Belgium, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Sweden and the United Kingdom (UK). Representatives of academia, civil society and international organizations, were also invited to be part of the constructive dialogue.

The expert meeting was opened by the hosts, Moldova and Sweden, and the European Commission (EC). The first session of the meeting was designed to display a global overview to immigration detention. The EC opened the session with an identification of the key issues about immigration detention in Europe. Sweden highlighted certain issues connected to the objectives of using detention. The International Organization for Migration (IOM) Ukraine then facilitated a discussion on the detention policies and practices in the EU and EaP countries, with input from all participants. The United Nations High Commissioner for Refugees (UNHCR) Moldova delivered a presentation on the applicable criteria relating to the detention of asylum-seekers and alternatives to detention. Moldova stressed the crucial aspects of protection of people with specific needs, which was completed by a presentation on the possible negative effects of detention, delivered by a researcher of Uppsala University.

The second session underlined the importance of immigration detention monitoring and cooperation between Government and civil society. The Moldovan Institute of Penal Reforms started the session with a presentation on the observatory mechanism, followed by some thoughts on legal counseling to detainees by the AIRE Centre Advice on International Rights in Europe (UK).

The third session was dedicated to alternative solutions to detention and started with a presentation of policy position on alternatives to detention by the International Detention Coalition. Belgium and the Netherlands shared their national best practices in practical implementation of the alternative solutions. The session continued with plenary discussion.

The second day was devoted to a study visit to the Center for Temporary Detention of Foreigners in Chisinau.
Welcome and Opening

Ms. Olga Poalelungi, Bureau for Migration and Asylum of Moldova, opened the meeting by welcoming the participants and thanking Sweden for co-hosting. The topic of immigration detention is very relevant for Moldova as a country that has common borders with the EU. Detention should never be automatic and should not be the primary reaction to migration processes. If immigration detention takes place, the issue of human rights observance and monitoring arises. The Panel meetings serve as an excellent forum to discuss such problems.

Mr. Andre Nilen, Swedish Migration Board, highlighted Swedish commitment to the Panel since the times of the Söderköping Process. Detention often is a part of asylum and migration processes, serving as a tool to facilitate identification and return. It should be used as an exceptional and last resort measure and always be accompanied by a series of safeguards. The EU has made progress in establishing common legal framework for immigration detention.

Mr. Adrian Georgiev, DG Home Affairs, European Commission, thanked the co-hosting states for organizing the Panel meeting. He encouraged participants to engage into discussions during the session dedicated to the discussion paper that was prepared based on inputs received from the participating countries by means of the questionnaire distributed among the Panel members prior to the meeting. Exchanging best practices and promoting alternatives to detention amongst experts is very beneficial and the best way to achieve concrete results.

Session I. General overview to immigration detention
Facilitator: Mr. Andre Nilen, Sweden

Mr. Adrian Georgiev, DG Home Affairs, European Commission, described the key issues about immigration detention in Europe. The legal framework for detention and return in the EU is primarily laid out by the Return Directive and related rulings by the European Court of Justice (ECJ). The European Return Fund and the readmission agreements complement the set of instruments. All measures accompanying return, including detention, should be as non-coercive as possible and alternatives to detention should be given preference. The available alternatives are, however, mainly left to national legislation and he stressed that the EC is keen on learning more on national practices in this respect. Transposition of certain provisions of the Return Directive into national legislation of the EU MS remains challenging due to the absence of common grounds for the operationalization of detention.

Mr. Niclas Axelsson, Swedish Migration Board, overviewed the objective of using detention stressing that it aims at ensuring a person’s availability for the implementation of the immigration process, such as the preparation of return or the assessment of the migration status). Detention should thus only intervene if there are indications that the person will not cooperate and only as long as the main process is ongoing. The particular character of this type of detention should thus have a direct impact on the treatment of the person, which should be different from the one reserved to prisoners. Alternatives to detention are beneficial in terms of lesser cost and more humane treatment. Sweden aims at reducing the use of repressive measures and is reviewing the need of detention as such.

Ms. Marina Schramm, International Organization for Migration (IOM), Mission in Ukraine, presented the discussion paper that was prepared prior to the meeting based on input received from 21 participating countries. This presentation provided the participants with a first opportunity to learn more about the practices in other countries, but also to discuss challenges and opportunities.

The first lively discussion evolved around the question of how the “risk of absconding”, foreseen by the return directive as one of the grounds for detention, is assessed. Georgia stressed that, in their opinion,
as also reflected in their new legislation, this assessment should be carried out by a court and be based on an interview with and an analysis of the individual’s situation and include social and economic indicators such as the presence of family members, employment or the availability of accommodation. Poland’s legislation foresees an open catalogue of indicators that might point towards a risk of absconding, such as the absence of documents or repeated false declarations. The detention decision will however again be based on an individual assessment. Sweden, Moldova, Estonia and Azerbaijan confirmed that whilst there can be certain indicators, each and every detention decision needs to be based on a careful assessment of the individual case and be regularly reviewed.

Discussing legal safeguards, especially the right to appeal and/or review of the detention decision, all EU MS have mechanisms in place that establish that either an administrative or judicial review is automatically carried out at regular intervals (confirmed by the Netherlands, Estonia, Hungary, Sweden, Finland). In all EaP countries the migrant has the right to judicial appeal of the detention decision (confirmed by Georgia, Azerbaijan). The participants agreed that a judicial review can provide for more objectiveness and thus be able to better guarantee that detention does not turn into an arbitrary measure. In this respect it is also crucial that the right to legal representation is effective. Mr. Matt Moriarty from AIRE commented that in the UK, access to effective and efficient free legal aid is more difficult for migrants than for criminals, which should be highlighted as a bad example.

The maximum duration of detention was also actively discussed by participants. For most EU MS 18 months is the absolute maximum of detention based on the provisions of the Return Directive, although as the Netherlands, Poland and Sweden explained, in practice the average duration of stay is generally much shorter. At the same time, there is de facto no maximum duration in the UK which, in AIRE’s opinion, increases the vulnerability of and lack of reliable prospects for migrants. Both Georgia and Moldova agreed that the longer the person is kept in detention, the less it serves the initial purpose.

With regard to individuals who cannot be returned, so called non-removable, not all countries envisage a specific status for those persons. In this respect, the fact that Georgia, Moldova and Poland provide for special permissions to stay to those individuals, can be highlighted as best practice.

Please see the presentation “Detention Policies and Practices in the European Union and EaP Countries”

Mr. Octavian Mohorea, United Nations High Commissioner for Refugees (UNHCR), Moldova presented the UNHCR Guidelines on detention of asylum seekers, which were released in 2012. These 10 guidelines summarize UNHCR’s policy position and are designed to advice government authorities dealing with asylum seekers. The guidelines emphasize that seeking international protection is not a criminal act and that indefinite and mandatory forms of detention are prohibited under international law. Thus, detention of asylum-seekers should be an even more exceptional measure than other categories of migrants. UNHCR encourages countries to make better use of alternatives to detention, which might include reporting requirements to community and supervision schemes or accommodation in designated reception centers with no restriction of freedom of movement. Please see the presentation “UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention”

Mr. Boris Gandrabura, Bureau for Migration and Asylum of Moldova, delivered a presentation on the protection of people with specific needs in Moldova. The return and detention policy in Moldova has recently changed significantly, taking into account the provisions of the EU Return Directive and the 20 Guidelines on Forced Return. The detention center applies standards on treatment of vulnerable groups to safeguard the respect of fundamental human rights, the principles of family unity and the best interest of a child. A memorandum on cooperation between the Bureau, the National Council on State Legal Advice and the NGO “Legal Center of Lawyers” is in place to ensure the provision of free legal aid. Social assistance to vulnerable groups is provided by two NGOs, one of which is specialized on working with children. Please see presentation “Protection of People with Special Needs” (in Russian)
Mr. Soorej Jose Puthoopparambil, Uppsala University, drew attention to the negative consequences of detention on individuals. Migrants often suffer certain traumata on their journey (such as being victim of torture or trafficking and suffering from poor mental health) and empirical data shows that these pre-existing conditions worsen in detention. Whilst effects on mental and psychological health arise, qualified help is not always available. The negative effects on physical health are usually caused by lack of proper medical care and hygiene. Medical complaints also increase with the duration of detention and the effects can persist up to three years after release. Proper treatment of migrants in detention must also include considerations connected to the right to highest attainable standard of health, equal access to medical care and a healthy social environment. *Please see the presentation “Effects of Immigration Detention on Health”*

**Discussion**

The Netherlands inquired whether the mentioned effects occur in other forms of detention and it turned out to be so. Sweden underlined that states have to make everything for ensuring that conditions in the detention centers are not life threatening, mentioning also the sad case of a recent suicide in a Swedish detention center. Moldova remarked that although children are not detained in Moldova, the conditions offered by the center are sometimes better in terms of accommodation and proper medical care than outside of the center. Poland noted that negative conditions and effects of detention described in the presentations are not the case for all facilities, so the scale of the effects might be very different.

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**Session II. Immigration detention monitoring and cooperation between government and civil society**

Facilitator: Olesea Cotoman, Moldova

Mr. Alexandru Cebanas, Institute of Penal Reforms (IRP), Moldova, delivered a presentation on the Observatory Mechanism in Moldova and Ukraine. The Institute of Penal Reforms is an NGO that has been cooperating with the Bureau for Migration and Asylum since the opening of the Chisinau Migrant Accommodation Centre in 2008, at the beginning with the support of various EU-funded, IOM implemented projects, and now based on a Memorandum of Understanding. Through the so-called Observatory Mechanism, a tool for monitoring detention conditions and the provision of legal assistance and analysis, the IPR has supported the Bureau in identifying legislative and regulatory gaps and in addressing those. Through this cooperation, that can definitely be qualified as best practice, placement in detention has been transformed from having in practice a more punitive character, since detention was automatically ordered for a six-month period, to having a purely administrative character that foresees initial placement 30 days only. The IPR suggests further amendments to the Law on foreigners in order to avoid repeated detention and ensure proper legal representation. *Please, see presentation “Observatory Mechanism in Moldova and Ukraine” (in Russian)*

Mr. Matt Moriarty, Advice on International Rights in Europe (AIRE) Center, UK illustrated the peculiarities of legal counseling to detainees from the point of view of the lawyer who provides such counseling. Legal counseling is equally important not only for observing migrants’ rights, but also for the detention centers not to keep migrants without clear purpose. The principle of legal certainty should always be applied, especially in terms of medical rights, judicial review and human rights. Genuineness and timeliness of case reviews, as well as the individualized assessment do not always happen in practice. Certain practicalities (length of visits, cost and length of travel, waiting times, interpretation and communication) influence the quality of the process of legal aid provision. Thus, the visits of the lawyers have to be facilitated by the detention staff as much as possible, providing prompt access to clients and records, sharing information and guaranteeing privacy and security. *Please see the presentation “Legal Counseling for Detainees”*
Discussion

Moldova asked to share experience on detention monitoring in cooperation with civil society and IOM Ukraine elaborated on the Observatory Mechanism as a part of EU-funded projects implemented in Moldova and Ukraine, which implied independent monitoring by civil society. The mechanism worked on three levels: 1) permanent NGO presence, 2) reporting, 3) monitoring visits by state structures and representatives of embassies. Georgia inquired about practices of internal monitoring by social workers employed by the detention center and Moldova added that members of Government, NGOs and Ombudsman can visit the center at any time. Sweden marked its cooperation with a variety of organizations aimed not only at supporting detainees, but also at the staff of the center. Estonia informed that NGOs have access to detention facilities and stressed that the Return Directive imposes the establishment of effective monitoring systems. Azerbaijan added that monitoring visits are carried out by the IOM, UNHCR and the Ombudsman. Latvia reported on the UNHCR monthly monitoring visits to the asylum centers and the Ombudsman’s tri-monthly monitoring of return procedures. As for the internal monitoring, Latvia highlighted attention paid to staff in terms of developed tests accessible through intranet and special recruitment procedures.

Session III. Alternative solutions to detention
Facilitator: Mr. Pieter Stockmans, Belgium

Ms. Lucy Bowring, International Detention Coalition (IDC), presented a comprehensive study on alternatives to detention. According to its findings, 50 different types of alternatives to detention are used around the world and they proved to be up to 80% cheaper than custodial detention. Early intervention in the process is crucial for the success of alternatives and effectiveness of the case management. Although there is no ideal model of alternatives to detention and since each one might cause challenges in its implementation, community setting is perceived as one of the most powerful tools. When making decisions on whether to detain or not, the presumption of freedom should be always kept in mind and the detention measure itself should be used as a last resort in exceptional cases only. Please see the presentation “Alternatives to Detention and Their Practical Implementation”

Mr. Pieter Stockmans, Flemish Refugee Action, shared Belgian national practices in terms of alternatives to detention for families with minor children. In 2008, nine residential open houses for accommodation of families pending their departure were established and, since then, children are not placed in closed-type facilities. This option allows continuation of family life, respects privacy and proves its cost effectiveness compared to regular detention practices. The family is appointed a coach (a return assistant from the Immigration Office), who guides the family throughout the return process. Despite fears of high absconding rates and increasing number of families entering the country, several years of project implementation showed only a 20% absconding rate. Such alternatives are becoming more and more part of the overall policy in Belgium. Additional information on need of alternative solutions for migrants who cannot be returned can be found at www.pointofnoretur.eu. Please see the presentation “Return Homes As an Alternative to Detention”

Mr. Tijs Bagchus, Ministry of Security and Justice of Netherlands, added on the experience of the Netherlands when taking decisions on whether to keep a migrant in detention or to use less repressive means. However, before placing a person into detention, alternatives have to be considered. The Netherlands use a number of alternatives, such as: 1) duty to report 2) deposit or financial; 3) support in return preparation by NGOs. Since the introduction of alternatives, the cases of regular detention has decreased by 2/3.

Plenary discussion on alternatives to detention
Moldova informed that certain alternatives exist in practice in the country and detention is used as last resort measure. The Moldovan legislation was recently amended to extend the time limit for voluntary departure to 15 days and cancel fines for those who leave voluntarily.

Answering the question about the success rates of the different alternatives to detention the Netherlands identified the practice of deposits or financial guarantees as the least effective measure, whilst reporting obligation and open reception centers for rejected asylum seekers could be assessed as the most effective.

Replying to Georgia’s inquiry regarding unaccompanied minors, Belgium reiterated that minors are not detained, but assigned a guardian and placed into specialized open centers. As minors are not subject to forced return, the guardian can assist in organizing voluntary return of the minor.

Georgia requested more information from the participants regarding the actual maximum term of detention. Belgium replied that in practice in case of repeated detention, the new term of detention does not take into account the previous term, rendering in fact the duration of detention indefinite. When a person is released after the maximum term is reached, no special status is granted.

UNHCR highlighted the importance of using alternatives to detention as a more simple and cost-effective option, and pointed out the need to stipulate this in national legislation of Moldova.

Sweden voiced the issue of ensuring that migrant receive and understand information regarding their case in a timely and reliable manner. Luxembourg explained that specific attention is paid to this matter during the migrant’s first hours in detention center, making sure he/she receives an individual consultation to ensure that he/she understands all rights and responsibilities and has an opportunity to address all open questions.

27 March 2014 – Day 2

Study visit to the Center for Temporary Detention of Foreigners in Chisinau

The visit started with a presentation of the detention center by the administration describing its structure and activities. The center itself is located within the territory of the city and started operating in 2009 with the support of EU funds and the Ministry of Foreign Affairs in Finland. Whilst its full capacity is 250 persons, at the time of the visit only 12 migrants were detained. At most, there has been 30 detainees at the centre. A total of 41 staff is working in the center. The participants toured the center guided by the administration.

The average duration of detention in the center is currently at three weeks. The most common nationality of detainees are Russian, Ukrainian and Turkish citizens. The majority of detainees are elderly people and the center has very little experience of detaining minors.

The detention center is located in a fenced area with a guarded security check for visitors. The detention facilities are composed of two large block buildings in parallel to each other. One of the buildings is designated for families and there is a small playground in connection to it.

The common space inside and outside are subject to camera surveillance. The facilities are newly built and generally spacious. The male facilities have a lower level of comfortability than the family section. Each window is sealed with bars but there are no alarm detectors attached to the windows and the
doors. Each room is equipped with a heavy metal door that can be locked from the outside. The male rooms are locked at night, whereas the female and family rooms are open 24 hours.

Detainees can be separated at two different occasions. When detainees are arriving they undergo a medical examination closely located to the accommodation. Detainees can also be separated for security reasons on the bottom floor which is entirely separate from the general space. This area is currently reviewed and will be rebuilt due to poor standards. There is plenty of space for sports and outdoor activities and gyms are available in the center. There are also TV and internet options. Internet usage is however surveilled by the staff.

The personnel who are hired under the Ministry of Interior are altogether 26 staff members working in 24 hour shifts. Each staff member is off duty for three days before the next shift. They are all divided into teams with different sets of responsibilities. Staff members wear uniforms and are entitled to use force if necessary. They communicate with each other through portable radio sets.

Detainees follow a steady schedule of waking up at 7 AM and going to bed at 10 PM. In cases where a detainee wishes to digress from this schedule he /she must file a separate request to the staff. Aggressiveness is not tolerated and in such rare cases the detainee can be separated from the other detainees.

The attitude towards detainees is centered around integrity and respect. They address them in polite manners and avoid patterns of behavior which is associated with punitive institutions. The staff is trained in behavioral manners. Special attention is paid to families and there is a well-functioning NGO cooperation to meet special needs of families.

Medical personnel are always available and there are separate medical facilities where examinations and basic treatments can be performed. In more severe cases the doctor can ordinate the detainee to a regular hospital. In such cases the police is present up to 24 hours and after that the staff of the detention center takes over. When the detainee is registered at the center a medical screening takes place where commonly known diseases are checked such as TBC and STD. The detainee is then isolated for up to two days before the test results are received. Persons with TBC are taken to a specialized hospital.

Religion can be practiced in separate facilities. There is one room for Christians and one room for Muslims. They are generally well prepared and decorated. In case there is a need for other forms of religious practices the center aims to attend to those needs. The food served in the detention center is also sensitive to the religious customs of the detainee.

Detainees are informed about their rights and responsibilities in the detention center. On several doors there are information signs posted on Russian and Romanian. Not all commonly used languages occur on the information signs. The information also contains the judicial grounds for detention and asylum. Interpreters are used but sometimes there are difficulties in finding interpreters who are authorized or who have adequate language skills.

All detainees have the right to appeal against the decision and they also have the right for a legal counsel and interpreter. In all cases of detention a lawyer is informed about the deprivation of liberty within one hour. There is a memorandum of understanding signed by the authority on the one side and
on the other side the National Council of State Legal Aid and the Law Centre of Advocates who provide legal counselling and emergency legal aid.

Visits are allowed from family members and friends. Prior to the visit the visitors have to file an application which is then subsequently responded within 3-4 hours by the head of the unit. All visits are surveilled. Detainees also enjoy the right to write letters and make telephone calls.

**Closure of the Expert Meeting**

**Ms. Olga Poalelungi**, Bureau for Migration and Asylum of Moldova, noted that the center was constructed under EU funding and with IOM assistance using experience of similar centers in the EU and in Ukraine. Ms. Poalelungi thanked all the participants and organizers for being part of this constructive meeting and expressed her hopes that all participants appreciated the exchange as much as herself.

**Mr. Andre Nilen**, Swedish Migration Board, expressed his gratitude to everyone for the very constructive dialogue that contributed to making the meeting was a success and fully achieved its objectives. Viewing detention as last resort and acknowledging existing challenges are common for both EU MS and EaP countries. Mr. Nilen suggested to pursue the work on alternatives to detention and highlighted the importance of monitoring mechanisms carried out jointly with civil society, highlighting Moldova as a good example for this practice.

**Mr. Adrian Georgiev**, DG Home Affairs, European Commission, in his closing remarks underlined the importance of the information received regarding mitigation measures in terms of health effects of detention, non-returnable migrants, alternatives to detention and the role of coaches. He stated that the EC is ready to share existing solutions and additional information on the subject and thanked everyone for the participation. He also expressed his appreciation for the extremely constructive and open dialogue that he witnessed, qualifying it as a best practice in itself.

*All presentations mentioned in this report, as well as the materials related to the meeting, can be found at the Panel website [www.eapmigrationpanel.org](http://www.eapmigrationpanel.org)*