

Combating Irregular Migration in Albania and the wider region
Targeted support to capacity building within the framework of readmission
support to Albania

THE RETURN OF IRREGULAR MIGRANTS TO ALBANIA: AN ASSESSMENT OF CASE PROCESSING, RECEPTION AND RETURN

Needs and Modalities



HELLENIC REPUBLIC
MINISTRY OF INTERIOR
PUBLIC ADMINISTRATION
AND DECENTRALISATION



IOM International Organization for Migration,
ONM Organizata Ndërkombetare për Migracionin

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	3
LIST OF ABBREVIATIONS AND ACRONYMS	6
EXECUTIVE SUMMARY	7
1. INTRODUCTION	8
A. Background	8
B. Scope and target of the assessment	9
C. Structure of the assessment report	10
2. RECEPTION AND RETURN OF IRREGULAR MIGRANTS IN ALBANIA	11
3. METHODOLOGY	14
3.1. Basic considerations	14
3.2. Methodological tools	14
3.3. The Assessment's four components	15
3.4. The working groups and coordination with other entities	16
3.5. Analysis of current practices	16
3.6. Study visits	17
3.7. External consultants	18
3.8. Main constraints	18
3.9. Post-assessment phase	18
4. ASSESSMENT	19
4.1. The Institutional Component	19
Introduction	19
Assessment of the main Gaps and Recommendations	19
4.1.1. Expected number of residents per centre	19
4.1.2. The scope of the centre and the different categories of irregular migrants concerned	21
4.1.3. The institutional bodies involved	24
4.1.4. Preventing abuse of power	28
4.1.5. The coordination with the other centres and other official authorities concerned	29
4.1.6. Voluntary return	30
4.1.7. Alternatives to detention	31
4.1.8. End of detention and post-detention measures	33
Conclusions	35
4.2. The Legal Component	36
Introduction	36
Assessment of the main Gaps and Recommendations	36
4.2.1. The legal basis for establishing and running a closed reception centre	37

4.2.2. Legislation regulating detention.....	38
4.2.3. Length of detention.....	40
4.2.4. Legislation regulating return and removal.....	42
4.2.5. Content and format of the return decision/removal order.....	46
4.2.6. Judicial remedies against return, removal and detention.....	47
4.2.7. Re-entry ban.....	49
4.2.8. Rights and treatment of irregular migrants detained in closed centres.....	50
4.2.9. Alternatives to detention.....	51
4.2.10. Post-detention measures.....	52
Conclusions.....	52
4.3. The Human-Material Component.....	54
Introduction.....	54
Assessment of the main Gaps and Recommendations.....	54
4.3.1. List of material and human needs of the residents of the closed reception centre.....	54
4.3.2. Vulnerable categories.....	65
4.3.3. Characteristics and responsibilities of staff.....	67
4.3.4. Staff selection, gender balance and the immediate training needs of the staff.....	68
4.3.5. Internal regulations, complaint mechanisms, monitoring activities, transparency and data protection.....	69
4.3.6. Material resources needed for the centre.....	71
4.3.7. Estimate of providing the centre with the needed resources.....	72
Conclusions.....	73
4.4. The Geographical Component.....	75
Introduction.....	75
The steps followed in the process of the Geographical assessment.....	75
Step One: the two scenarios and the relevant legislation.....	75
Step Two: the criteria for selecting the best site.....	75
Step Three: site visits and the selection.....	76
Step Four: change in the administrative status of the site.....	77
Step Five: the bidding process.....	77
Step Six: the final project design.....	78
Other Current Practices.....	82
Conclusions.....	83
5. GENERAL CONCLUSIONS OF THE ASSESSMENT.....	84
Institutional Component.....	84
Legal Component.....	85
Human-Material Component.....	85
Geographical Component.....	86
General final considerations.....	86
ANNEX 1.....	88
ANNEX 2.....	94
ANNEX 3.....	97
ANNEX 4.....	103

LIST OF ABBREVIATIONS AND ACRONYMS

AVR	Assisted Voluntary Return
CARDS	Community Assistance for Reconstruction, Development, and Stabilization
CAT	UN Convention Against Torture
CEDAW	Convention for the Elimination of all forms of Discrimination Against Women
COE	Council of Europe
CPT	European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment
CRC	UN Convention on the Rights of the Child
DBM	Directorate for Border and Migration, Albanian MOI (formerly the Central Directorate of Border Police)
DCM	Decision of the Council of Ministers
EC	European Commission
ECHR	European Convention on Human Rights
EU	European Union
GoA	Government of Albania
IBM	Integrated Border Management
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICITAP	International Criminal Investigative Training Assistance Program
ICRMW	International Convention on the Rights of all Migrant Workers and members of their families
IGC	Intergovernmental Consultations on Asylum, Refugees and Migration Policies in Europe, North America, and Australia
IGO	Intergovernmental organization
IOM	International Organization for Migration
JDL	UN Rules for the Protection of Juveniles Deprived of their Liberty
MOD	Ministry of Defence
MOI	Ministry of the Interior
MOJ	Ministry of Justice
MOLSAEO	Ministry of Labour, Social Affairs, and Equal Opportunities
MoU	Memorandum of Understanding
NGO	Non-governmental organization
NRC	National Reception Centre
OIN	Office of Immigration and Nationality of Hungary
OSCE	Organization for Security and Co-operation in Europe
PAMECA	Police Assistance Mission of the European Community to Albania
RA	Readmission Agreement
SAA	Stabilization and Association Agreement
SAP	Stabilization and Association Process
SIS	Schengen Information System
TOR	Terms of Reference
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VoT	Victim of trafficking
WHO	World Health Organization

EXECUTIVE SUMMARY

In May 2006, the multilateral Readmission Agreement (RA) between the Member States of the European Community and Albania came into force, providing a reference for facilitating the return of own nationals (Albanian and EU citizens). The third country clause of this agreement will come into force in 2008. Essentially, this clause will facilitate the return to Albania of citizens who are neither EU or Albanian citizens (i.e. third country nationals) when they have transited/stayed Albania before entering an EU Member State.

Albania currently has limited capacity and resources to adequately handle, accommodate, remove or facilitate the voluntary return of irregular foreigners who are neither asylum seekers nor victims of trafficking. In particular, Albania lacks an appropriate facility to temporarily accommodate irregular migrants pending their removal. This assessment report addresses the main aspects regarding the case processing, the reception and the return of irregular migrants in Albania, in particular focusing on the creation of a closed reception facility for irregular migrants awaiting their removal, and it provides a number of recommendations and conclusions. First, the assessment found that the current institutional framework is still not fully adequate for managing the various aspects of migration, in particular forced return and detention pending removal. In order to strengthen its institutional capacity in migration management, an institutional restructuring, to meet both short and long-term needs is needed. Second, the legal framework regulating the handling, detention, and removal of irregular migrants was found to be quite vague and, in many cases, incomplete and fragmented. Because of this, it is recommended that the laws be revised and, where appropriate, amended, also in order to comply with EU and international standards in the field. Third, the assessment identified the range of services that should be provided to run the facility and to best meet the material and human needs of residents. Fourth, it identified criteria for selecting the best location for the centre and the architectural layout of the building.

This report was prepared as part of the project *Combating Irregular Migration in Albania and the Wider Region: Targeted Support to Capacity Building within the Framework of Readmission Support to Albania*, which supports the Government of Albania in fully and successfully implementing the EC-Albania Readmission Agreement, a requirement of the Stabilization and Association Agreement. The report provides a detailed description of a full-scale assessment of the Albanian situation in the field of handling irregular migrants who are not asylum seekers or victims of trafficking from a legal, institutional and material perspective. The main focus, however, is the establishment of a closed reception centre for the temporary accommodation of irregular migrants pending their removal.

INTRODUCTION

A. Background

In May 2006, the multilateral Readmission Agreement (RA) between the Member States of the European Community and Albania came into force, providing a reference for facilitating the return of own nationals (Albanian and EU citizens). The third country clause of this agreement will come into force in 2008. Essentially, this clause will facilitate the return to Albania of citizens who are neither EU or Albanian citizens (i.e. third country nationals) when they have transited/stayed Albania before entering an EU Member State.

During negotiations for the Stabilization and Accession Agreement (SAA) held in 2003, Albanian officials and European Commission (EC) delegates highlighted the need for the Government of Albania (GoA) to address the issues of temporary detention and return of irregular migrants. These issues were partly addressed in the *Action Plan on Free Movement* and the *EC Partnership Priorities for Albania*, and were then taken on as a priority by the GoA's National Strategy on Migration and the corresponding Action Plan approved by the Council of Ministers in 2005.¹ In the strategy it was highlighted that Albania should devote special attention to draw a more comprehensive policy on irregular migration, with a specific focus on return, in view of the entry into force of the RA and, further down the line, of the third country clause. The Strategy calls for progressive approximation towards the EC *acquis* and to put measures into place to better face the 'readmission trap', according to which third country nationals, returned from EU member states and other states may be left stranded in Albania thus fuelling further migration volatility through the region.

The National Strategy on Migration specifically addresses the lack of appropriate facilities for irregular migrants and the need to adopt the necessary mechanisms for handling and returning irregular migrants, also in line with the EU and international principles. At present there are reception facilities for Victims of Trafficking and Asylum Seekers; however, these categories of foreigners require very different treatment from irregular migrants. The distinction between the above categories is also in line with international standards² and, above all, with the practices of most European countries, which, in fact, shelter irregular migrants pending removal in separate accommodation.

With the aim of assisting the Albanian Government in filling this gap, this assessment makes links to and complements other national strategies and initiatives that cover issues related to migration management. In particular, for certain issues it reviews in detail the work already carried out for the *Gap Analysis on Migration Management in Albania*,³ a project that identified legislative and institutional practices concerning immigration into Albania and evaluated how well they met the requirements of the SAA.

¹ The National Strategy and the National Action Plan have been elaborated under the programme Community assistance for Reconstruction, Development and Stabilisation (CARDS), funded by the EC and implemented by IOM. A policy paper containing 132 proposals has been approved by the Council of Ministers in November 2004. The Strategy is complemented by an action plan with concrete measures to be implemented between 2005 and 2010. An inter-institutional Working Group elaborated this action plan that was adopted in May 2005.

² Although the EU *acquis* on detention of irregular migrants pending their removal is, at present, not binding, numerous recommendations are available on this regard.

³ The Analysis of Albanian Migration and Practice as compared to EU and International Standards is the result of close collaboration between IOM Tirana experts and the Albanian Government. The findings of this gap analysis have been partially incorporated and expanded upon in this Assessment.

It also complements the procedures implemented by the pre-screening system, operational since 2001 as initiative of the Albanian Government, OSCE, UNHCR and IOM.⁴ Pre-screening enables the authorities that apprehend migrants to identify asylum seekers, victims of trafficking and irregular migrants, and to refer them to the different institutions charged with dealing with them. As a result of this project, a Pre-Screening Team was established in June 2004 and staffed with representatives of UNHCR, IOM, OSCE and the Directorate for Refugees. The team is currently being taken over entirely by the GoA.

Furthermore, an analysis of existing national strategies - the National Action Plan on Asylum (adopted on 29 August 2003), the National Strategy on Integrated Border Management (approved by DCM 118/2003) and the National Strategy on Counter Trafficking (adopted in December 2001) has highlighted that at the present the main gaps that exist concern irregular migrants who are neither asylum seekers nor victims of trafficking.

B. Scope and target of the assessment

The main focus of this assessment is the establishment of a closed reception centre for irregular migrants pending their removal.⁵ Such a facility is necessary in order to properly face the arrival of third country nationals after the entering into force of the third country clause of the RA (2008) and, more generally, to provide proper accommodation, when it is needed, for irregular migrants already in the country. The facility should be fully operational before the third country clause comes into force and comply with European and international standards.

Despite this focus, IOM views the use of less coercive measures (i.e. regular reporting to the responsible authorities, the deposit of a financial guarantee, the handing over of documents, the obligation to stay at a designated place, etc.) as preferable to detention. IOM does not take a normative position against closed centres, as they are considered common elements in migration management systems in most countries, including EU Member States, but it does advocate the use of closed reception centres only as a last resort, to prevent the risk of absconding and if alternative measures are ineffective. This assessment suggests the use of these measures and gives some initial indication of their nature. It also contributes to improving the knowledge of the Albanian authorities and building their capacity to operate any future centre in a manner consistent with the EU *acquis*, international standards, and human rights principles in the field.

Consequently, this assessment recommends that the GoA undertake further work in order to promote and directly assist with the provision of less restrictive options to detention, including the development of Assisted Voluntary Return (AVR) programmes, open service/reception centres, and centres for special support to vulnerable categories. The GoA will continue to receive assistance and advice on how to provide additional humanitarian, information, and other kinds of services to migrants in reception centres, and will directly provide such services when appropriate in such centres.

⁴ The project Pre-Screening of Asylum-Seekers and Migrants in Albania, funded by the EC under the CARDS-2003 Programme and co-funded by project partners, UNHCR (Project Coordinator), IOM and OSCE. The (then) Ministry of Public Order launched the procedure through an administrative Instruction (No.1382, dated 08/02/2001) to all Police Commissariats of Albania. This Instruction was followed by a Memorandum of Understanding (MoU) signed in April 2002 by all the above partners. The Instruction was revised and a new one, No. 2008 was signed on 12/10/2004, extending the system to the border areas.

⁵ The facility will be built with funds provided under CARDS 2004 programme.

Furthermore, it has to be outlined that the assessment goes beyond the establishment of the centre per se and analyses the mechanisms for handling and returning irregular migrants, as it was considered that the creation of such a facility represents an issue to be addressed in the framework of other related legal, institutional and material aspects. Indeed, the centre will not fulfil its objective if the procedures, legal basis and material resources needed for the overall handling of the migrants (i.e. for their protection, identification, removal) have not been clearly established. In an effort to address all these dimensions, the assessment is divided into four components that cover institutional, legal, human-material, and geographical aspects (see the Methodology for more information on each component).

This report is mainly intended as resource for the Albanian Ministry of Interior (MOI), in particular for the Directorate for Border and Migration (DBM), which is the authority charged with implementing the RA and for handling and returning irregular migrants. Once the centre has become functional, the DBM will also be responsible for running it. The report also provides a set of general recommendations that could be useful to other governmental and non-governmental actors operating in different countries and contexts.

The report is intended to be used either as a whole or by single sections, according to the specific interest of the users. As consequence, a degree of repetitions and cross-referencing between chapters have been retained to ensure that the sections can be read separately from one another.

C. Structure of the assessment report

This assessment report is divided into five main sections. The first section, the introduction, outlines the background and the scope of the assessment. The second provides an overview of the situation in Albania with regard to handling, accommodating and returning irregular migrants. The third, the methodology, describes the methodological tools that were elaborated to conduct the assessment and the main reasons underlying the choices made. The fourth section is the assessment itself, which is composed of four different sub-components; the institutional, the legal, the human-material and the geographical. Each of these components provides the main results of the different dimensions covered by the assessment.

Two of the four components (human-material and geographical components) focus exclusively on the establishment of the closed reception centre for irregular migrants, while the other two have a broader scope and deal with a range of related issues, such as return and removal. For all the issues under analysis, a specific structure is adopted, to highlight the specificities of the Albanian situation, the main EU and international provisions, the practices of other countries and suggested recommendations. Finally, section five includes a general conclusion of the findings of the whole assessment and includes also some of the further steps suggested.

Four annexes complete the report: the first includes three tables on some institutional and legal aspects regarding the reception of irregular migrants in three EU countries, whose practices were analysed during the assessment (Belgium, the Netherlands and Hungary); the second lays out the main architectonic features that were suggested by IOM to the Design Studio charged with drawing the plans for the centre; the third is a synthetic table which summarises the main recommendations to be considered in the establishment of a centre of this type (i.e. on length of detention, conditions of detention, treatment of vulnerable categories, etc.) with the indication of the main sources supporting these recommendations; and the fourth compiles all sources used to develop the assessment and this report.

RECEPTION AND RETURN OF IRREGULAR MIGRANTS IN ALBANIA

At the moment, the return of readmitted nationals from Albania to third countries of origin takes place in the context of the management of irregular migration. The number of irregular migrants identified on the Albanian territory is currently quite low but this might change in the following few years, as Albania is likely to become a country of immigration, much in the same way that EU countries have become over the last twenty years. Alternatively, readmitted migrants might seek asylum in Albania and remain in the country, depending on their circumstances.

The Albanian National Strategy on Migration (NSM) and the Action Plan address issues related to irregular migration as part of a holistic policy on migration management. The Strategy sets out the reception and return of third country nationals as a "mid term priority", to be addressed during the two year derogation clause foreseen in the EC/Albania RA. Nonetheless, it has been recognised that interim mechanisms should be adopted to handle and return irregular migrants. This means developing laws on expulsion procedures and creating facilities for housing irregular migrants pending their return.

Albania is the only country in the region to have signed a Readmission Agreement with the EC, and there is a need to prepare the country to fully and successfully implement the agreement through proper resources and facilities. This should also contribute to avoid the "readmission trap", which sees migrants that have been returned to Albania stranded in the country because no relevant procedures for return or agreements with third countries exist.

Currently, Albania has limited capacity and resources to adequately accommodate and facilitate the return of irregular foreigners who are neither asylum seekers nor victims of trafficking (VOTs). In fact, it appears that no third country nationals have been returned to their country of origin from Albania or another third country through existing readmission agreements⁶ or expulsion mechanisms, even owing to the limited facilities and mechanisms available in Albania. Return from Albania is only possible through the IOM AVR Programme and through the assistance of the diplomatic representation of the individual's country of origin.

The Assisted Voluntary Return is provided by IOM on the basis of a Memorandum of Understanding (MoU) with the Albanian authorities.⁷ Individuals who are eligible for return assistance include migrants in an irregular situation apprehended by the Albanian authorities, irregular migrants stranded in Albania who voluntarily request to return to their country of origin, and asylum seekers whose application has been rejected and have no means to return on their own. A standard package is provided to the returnees including information, psychological assistance, reception prior to return, and transportation.

The procedures to be applied in case of those irregular migrants who are issued a return decision but refuse to leave the country voluntarily, are, according to the current Albanian legislation, not inserted in a systematic and clear flow of procedures but on a case-by-case basis. The steps to be

⁶ Albania has currently signed eleven bilateral and multilateral readmission agreements, but not all of these agreements have been ratified or are in force as of yet. The majority of these agreements are with EU and accession States.

⁷ 194 returnees have been assisted to return voluntarily to their country of origin or to a third country between 2001 and 2004.

taken in such cases (immediate return, detention prior to removal, issuance of travel documents, implementation of expulsion orders)⁸ have not been properly laid out.

The assessment carried out for this report focuses on irregular migrants who are neither asylum seekers nor VoTs. Irregular migrants who are found in Albania or at its borders and who desire to return voluntarily to their country of origin have been referred to date to the pre-screening team. The pre-screening team screens migrants in order to identify asylum seekers, VoTs or irregular migrants and refer them to the competent authority.⁹ However, the pre-screening process was exclusively designed to facilitate the identification and referral of asylum seekers, VoTs and irregular migrants who express their willing to return to their countries of origin. This system did not include irregular migrants who do not wish to return voluntarily. At the time of writing the pre-screening team was handed over to the Albanian governmental authorities.

At the moment no closed reception centre exists in Albania specifically for irregular migrants pending their removal. The two National Reception Centres (NRC) currently existing are the National Reception Centre for Asylum Seekers¹⁰ and the National Reception Centre for Victims of Trafficking.¹¹ In the NRC for VoTs also irregular migrants have been accommodated so far in the time needed for organizing their departure.

Provisions for individuals who are temporarily accommodated at the border facilities (when apprehended at the borders) or at the police commissariat (when found within the territory) are limited, in particular regarding the maximum length of stay, services to be provided, etc. Transit reception facilities, available at certain border points, are designed for the short stay of irregular foreigners pending the pre-screening process and do not represent a feasible alternative for accommodating irregular foreigners. EC funding has enabled the creation of transit reception facilities near 8 selected Border Crossing Points and Police Commissariats. These facilities provide overnight accommodation to 4-6 persons.

The Albanian Ministry of Interior is the main central authority responsible for asylum and migration. Its Directorate for Refugees deals with asylum and refugees, while the Directorate for Border and Migration (DBM), within the State Police, is the main body responsible for migration. As such, DBM staff at Border Crossing Points (BCPs) or at the Police Commissariats are the respective police structures responsible to deal with all foreigners who cross (in and out) the Albanian borders or sojourn in the country. The MOI also issues and implements expulsion orders.

In addition to having scarce experience with the forced removal and administrative detention of irregular migrants, Albania suffers from a legal framework that is weak and contradictory. Existing dispositions regulating the establishment and operation of a temporary reception centre for irregular third country nationals are vague and scattered in different documents (for more details, see the Legal Component of the Assessment).

⁸ These issues have been covered in the Proposal for a System for Handling Irregular Migrants in Line with the EU Acquis and International Norms, IOM, 2006.

⁹ This takes place on the basis of Instruction No. 2008 of 12th October 2004.

¹⁰ This centre has been operational since May 2003. Asylum-seekers are admitted there upon permission by the Directorate for Refugees, which is the Institution running the centre. The main purpose of this NRC is to host asylum-seekers until their applications for asylum in Albania have been officially processed by the relevant authorities. They receive food, primary health care, free legal assistance, community and social services.

¹¹ The NRC for Victims of Trafficking became operational in July 2003. The centre is currently managed by the State Social Services of Ministry of Labour, Social Affairs and Equal Opportunities and assisted by IOM. At present, the NRC provides accommodation and assistance to: trafficked women (both foreign and nationals); unaccompanied children or children potentially at risk of trafficking (nationals); irregular economic migrants (foreigners).

In light of the shortcomings of the national legal framework and of the overall efforts aimed at alignment with EU standards, a new law on the State Police is being drafted and a gap analysis has been compiled on the Law on the Guard and Control of the State Border. Another gap analysis, this time on the Albanian institutional and legislative framework as compared to EU and international standards, was published in January 2004. Moreover, following unsuccessful attempts to amend the existing Law on Foreigners in 2005, the Albanian Parliament has recommended that a completely new law on foreigners be drafted.¹²

All the issues briefly mentioned above have been object of detailed analysis in the course of the assessment and will be better elaborated in the following chapters.

¹² Amendments to the law on foreigners were presented to the Albanian Parliament in 2005; however they were not passed. The amendments presented were numerous, as the Law was considered very fragmented and incomplete. For this reason, it was considered more appropriate to draft a new Law rather than amending the current one.

3

METHODOLOGY

IOM in close collaboration with the DBM (under MOI) and other relevant entities, undertook, in the period of one year, a full scale assessment of how irregular migrants in the country are, and should be, handled, received and removed. Although the scope of the assessment was quite comprehensive, the main focus was the creation of a closed reception facility for the temporary accommodation of irregular migrants awaiting removal.

3.1. Basic considerations

Given the broad scope of the assessment and the relatively new field of work, the elaboration of the methodology played an extremely important role. In choosing the most appropriate methodological tools, the following basic principles were taken into consideration at the beginning of the process and referred to throughout:

- The need to undertake the analysis on components of different nature (i.e. legal, institutional, human), which necessarily interlink and affect one another. A broad approach was chosen in order to avoid relevant gaps that, in the future application, could hamper the proper implementation of the whole process.
- The newness of the field for Albania and, more in general, for the countries of the region. Indeed, Albania is the only country of the South-eastern European region to have signed a multilateral RA with the EC and the first one involved in an assessment for a centre of this type.
- The lack of previous similar experiences in undertaking full scale assessments, even in EU countries that are more experienced in the field; and the need to predict long-term trends and try to meet short-term needs.
- The expanding documentation in this field, both at the European and International level. While the EU *acquis* on return is quite consolidated and it relates to the wider EU policy of combating illegal migration, the EU Council, Commission and Parliament are increasingly addressing the issue of detention (with the aim to establish minimum standards for detention and removal¹³ and to gradually harmonise the area of immigration legislation in the EU). However, at present, the standards available in the field are still mainly non-binding and indicative.
- The need to develop practical, common and sustainable solutions with counterparts and beneficiaries.
- The need to establish patterns of coordination with actors (governmental and non governmental) involved in interlinked activities (i.e. pre-screening process, legislative reform ongoing in the same field, etc.). The main aims were to avoid overlap and to fill the gaps between the different steps of the same process.

3.2. Methodological tools

In light of the above considerations, a combined methodology was utilised that incorporated the following:

- Full scale assessment of the current situation, carried out by IOM;
- Working groups to discuss and elaborate the proposals made during the internal assessment.

¹³ The EC Green Paper on a community return policy on illegal migrants COM (2002) 175 final, item 3.1.2 recognises the need to establish common minimum standards in the field, as forced return and detention are significant encroachments of freedom of persons.

The groups were composed of representatives of IOM, Government, International Organisations and NGOs;

- Analysis of current practices based on the experience of EU Member States;
- Study visits to reception centres for other categories of migrants in Albania, and to closed reception centres for irregular migrants in EU Member States;
- Bilateral meetings with stakeholders and relevant actors involved in the handling, referral, identification, and provision of services to irregular migrants;
- Involvement of external experts in the field of migration management.

3.3. The Assessment's four components

A closed reception centre for irregular migrants pending their removal will not fully serve its scope if all the procedures needed in the other phases (i.e. for identification, protection, removal) are not clear and well established. This premise is particularly important given that the detention of irregular migrants is not a punishment but, rather, an administrative measure. For this reason, the assessment was divided into four self-standing but complementary components, which intended to ensure that all the dimensions would be addressed. These were:

1. The Institutional Component. The current institutional framework did not fully reflect the various functions related to migration management, and in particular to forced return and detention pending removal. This is even more relevant in view of the implementation of the EC/Albania RA and future migration trends. Thus, an in-depth review at the institutional framework in Albania (i.e. which institutions are involved, what their internal structure and functions are, how they coordinate their work, etc.) was needed. Moreover, the institutional context was analysed so as to combine a short-term perspective with long-term needs.

2. The Legal Component. Legal provisions in this field (i.e. on what grounds migrants can be detained and removed, what legal recourses are available, etc.) are needed and are currently not fully available. As such, a complete overview of these provisions had to be carried out.

3. The Human-Material Component. It is expected that once the centre will be established a number of pressing and sensitive issues will arise. In order to ensure that human rights and dignity of the migrants are respected and that the centre is able to carry out its activities efficiently, a component devoted to identifying the human and material needs of the residents was created. This component also dealt with various other issues, including staff, monitoring activities, and finances.

4. The Geographical Component. The assessment also prepared the practical basis for the construction of the centre itself. In this light, the geographical component worked towards the achievement of practical results (i.e. identification of the location for the centres, the elaboration of the Terms of References for the Project Design of the Centre, etc.).¹⁴

Per each of the above component, the work was structured in such a way to include:

- Analysis of the current situation in Albania in the relative field of interest;
- Identification of the relevant gaps (mainly with reference to the EU *acquis* and international principles and to the experiences of other European countries);
- Elaboration of final general recommendations.

¹⁴ This process was outsourced by IOM to a Design Company, after the completion of a bidding process, which will be further explained below.

This structure was slightly changed and adapted to the specific objective of each component. Within each of the components, two working papers¹⁵ were produced and then shared and discussed with all the relevant stakeholders within the Working Groups.

The main sources of information consulted during the work were the following:

- o Relevant legal and administrative acts available at the national level;
- o The basic principles underpinning EU immigration policy (in particular those affecting the handling and the reception of irregular migrants);
- o The EU *acquis*¹⁶ in force (in the same field);
- o Binding and non-binding documents available at the international level, in particular within the UN system;
- o Relevant reports produced by International NGOs, concerning the detention of irregular migrants;¹⁷
- o Policies and practices in selected European Countries.

3.4. The Working Groups and coordination with other entities

Four working groups (one per each component) were formed to act as forum where the work of IOM could be presented and reviewed. The working groups were consultative and included representatives from the government ministries, state bodies, IGOs and NGOs.

The methodology proposed and employed by the working groups followed the same structure adopted by IOM for its internal analysis. Suggestions and changes provided during the working groups' meetings were then incorporated in the internal assessment and shared with the Working Group members so that they could contribute comments before the concept papers were finalized. In addition to the working group meetings, several **bilateral meetings** were held with the most relevant stakeholders. The aim of these meetings was to treat some of the issues that had arisen during the working groups in greater depth and to translate the recommendations into concrete interventions.

During the consultations, special attention was paid to establishing mechanisms for coordination and complementarity, in particular with:

- Entities involved in the pre-screening handover process, which represents the initial step of the process;
- Entities running the existing centres (the NRC for Asylum Seekers and the NRC for VoTs), due to the fact that strong links exist between the different categories (often an individual pass from one category to the other) and that the centres might in future cooperate in terms of human and material resources;
- Other actors, in particular international organisations working on connected issues.

3.5. Analysis of current practices

In several European countries, issues related to the return and reception of irregular migrants are becoming a priority. This is especially true in countries that have recently experienced significant

¹⁵ The working papers represent the main source of information for this report (they are unpublished).

¹⁶ The *acquis* is the body of common rights and obligations, which binds all the Members States together within the EU. It includes both hard law (legally binding acts) and soft-law (non-binding acts).

¹⁷ Some NGOs and advocacy groups in Europe are dealing with detention and forced return issues. A global alliance, in which the most important human rights organizations are involved, is in the process of being created to provide alternative suggestions to detention and to advocate for the respect of human rights in detention and forced return. This is what is mentioned in Detention in Europe: Administrative Detention of Asylum Seekers and Irregular Migrants, a report from the Jesuit Refugee Services, 2004.

inflows of irregular migrants and in countries that are approximating their legislation to the EU *acquis*. However, there are not yet absolute common standards accepted by all the states in this field. Different European countries have adopted different practices and legislative frameworks that reflect the characteristics of each country and are based on national considerations.

However, given the need to combine legal provisions with policies and practices, the experiences of other European countries assumed a particular relevance in the methodology. As the issue of detaining and forcibly removing irregular migrants is still evolving at the European level, no single experience could be nominated as best practice, but rather components of different practices were elaborated and put forward as recommendations. The experiences of three countries (Belgium, the Netherlands and Hungary) were mainly considered because they proved to be effective, well-rounded, and easier than others to apply to a different context. More particularly, the reasons of this choice are as follows:

- A preliminary study showed that Belgium and the Netherlands have developed comprehensive frameworks and they have significant experience in handling irregular migrants. As EU Member States, Belgium and the Netherlands were also seen as good role models for Albania in its process of progressive alignment to EU standards.
- Hungary was chosen also because its institutional and legal structures share some common elements with those of Albania and because its status as a former accession state makes it a more realistic standard.
- The information and data available on these countries was quite comprehensive and easily accessible.
- Immigration experts in the field¹⁸ indicated these countries as interesting examples within the European context.

The practices highlighted are not meant to be a comprehensive indication of best practices, nor the exhaustive examples of EU Member State practice, but rather to serve as reference for Albania and to show how certain specific countries deal with certain issues. The experiences of other countries (for example Spain, Italy, Sweden) were also drawn on, although these were chosen somewhat randomly, on the basis of easily available information.

3.6. Study visits

Three main study visits have been conducted to closed reception centres in Hungary, the Netherlands and in Belgium. These visits complemented the analysis of the current practices explained above. The choice of these countries was based on the same set of considerations above (i.e. comprehensive and clear legislative and institutional frameworks; availability of data and information in the field; practices mostly in compliance with EU *acquis*, etc.).

Delegates of DBM and IOM staff members attended the visits. The main aim of the visits was to observe how detention centres for irregular migrants work in practice and are run in other EU Member States, to provide the Albanian officials with more practical information that could be relevant for Albania in the future creation of closed reception facilities.

IOM staff members also visited the two National Reception Centres in Albania, the NRC for asylum seekers and the NRC for VoTs. The purpose of these visits was to see, first-hand, how the two reception centres function and to gain insights on how such centres are managed in Albania.

¹⁸ One of the organisations consulted was the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC).

3.7. External consultants

The expertise of **external consultants**, familiar with the handling and detaining of irregular migrants in EU Member States, was highly beneficial to the assessment, in particular to the work of the Human-Material and Geographical components. Their experiences and knowledge, both at the theoretical and practical level, was shared with Albanian officials working in similar sectors. Visits by experts to Tirana represented a relevant source of direct information for the assessment itself (with a particular attention to the main bottlenecks and points of strength of analogous experiences).

3.8. Main constraints

The methodology used took into account a number of constraints encountered during the work. First, there is a lack of statistical data concerning the migratory movements towards Albania and practices for the readmission of individuals from EU Member States. Above all, it remains unclear how many irregular third country nationals will be readmitted to Albania once the EC-Albania Readmission Agreement has come into force. This lack of data has hampered an in depth analysis and has made difficult to predict the future trends that the assessment meant to partially address.

Second, in order to maintain the focus of the assessment, it has not been possible to explore in detail all areas of the analysis. As result, gaps have been identified that could not be addressed adequately. At the institutional level, for example, the fact that the Albanian governmental bodies are undergoing structural reforms make it difficult to provide specific recommendations that reflect the changing reality. With regards to the legal framework, the main legal acts relevant in the field are quite fragmented and vague, so that here too effective recommendations could not be proposed. Where this is the case, it has been highlighted that further information and a more in-depth intervention are needed outside of the framework of this assessment.

Third, as the EU *acquis* in the field is undergoing changes and expansion, it was not always possible to identify the exact EC stance on all the topics analysed. Information on the topic of detention and forced return is not easily and readily available.

3.9. Post-assessment phase

As part of the identification of initial findings, IOM is currently elaborating activities aimed at complementing and exploring certain aspects of the assessment.¹⁹ These activities include training and other capacity building measures, in particular on issues such as carrier liability, detailed procedures for dealing with irregular migrants in line with EU *acquis* and negotiation of Readmission Agreements with third countries. These issues were identified as the most relevant and sensitive ones, in consideration of the forth-coming implementation of the Readmission Agreement and the future creation of the centre.

¹⁹ It is worth noting that all assistance will be given in line with IOM policy in handling irregular migrants as outlined in the AVR guidelines. According to these guidelines, IOM will not in any way be responsible for the running of the reception facilities.

ASSESSMENT

4.1. THE INSTITUTIONAL COMPONENT

Introduction

The authority responsible for dealing with irregular migrants that are not asylum seekers or VoTs is the Directorate of Border and Migration (DBM). At the time of writing, the DBM consisted of the Director and three sectors: the Sector for Foreigners and Migration, the Sector of Border Service and the Sector of Integrated Border Management (IBM) and Training. After March 2006, DBM took over the pre-screening procedure, which identifies and refers asylum seekers, potential foreign victims of trafficking, and other irregular migrants who wish to return voluntarily to their country of origin.

The DBM is also responsible for the procedures to follow for irregular migrants who do not wish to return voluntarily to their country of origin, though at present DBM's functions are not clear and the institutional structures appear not fully capable of performing all the activities required.

This component of the assessment included a number of cross cutting issues whose resolution was crucial to the other components. This component had to: qualify of the scope of the centre, indicate the expected number of individuals to be detained and the different categories of irregular migrants concerned. In addition, it also had to address the issue of ownership and management of the centre, the internal structure of the existing institutions, and the possible changes to the institutional framework over time.

The institutional component took into account existing institutional and legal frameworks in EU Member States as well as the EU acquis. For each issue, four main areas have been elaborated; a) the Albanian situation b) The EU acquis and international principles (where possible); c) practice in other selected European countries d) recommendations. The recommendations are generic enough to be valid also in other contexts, but they address the specificity of the Albanian case.

Assessment of the main gaps and Recommendations

4.1.1. Expected number of residents per centre

a) The Albanian situation

- The number of irregular migrants who enter and/or transit through Albania is currently quite low,²⁰ but it will probably increase in the next few years. It appears that no third country nationals have been returned to their country of origin or another third country through existing readmission agreements or expulsion mechanisms.
- Given the lack of data available, it is very difficult to estimate how many individuals will be readmitted to Albania after the entry into force of the third country clause of the EC/

²⁰ Based on the statistics of pre-screening for 2004, 61 foreign nationals entered Albania irregularly. Out of a total 61, 10 were found to be trafficked women; 22 out of 61 were not asylum seekers. The number of foreign citizens that have received work permits from February 1996 up to date is 5940.

Albania RA. Experts and researchers from the EU suggest that the number of readmitted third country nationals is likely to be low, as the EU member states will attempt to return third country nationals directly to their country of origin, as supposed to Albania as the last country of transit.²¹

- Due to this lack of data, it is not easy to establish the most appropriate capacity of a future closed reception centre. In addition to this, the financial aspects for the running of centres of this type (that will be charged to the Albanian authorities) have to be taken into consideration. That said, the experience of the existing centres for VoTs and asylum seekers can give an approximate target figure and potential cost estimation.²²
- Due to the current lack of centralized databases, the Albanian authorities cannot adequately record all the types of data regarding (irregular) migrants entering or transiting Albania. For these reasons, the authorities also have problems exchanging data at the international level.

b) The EU *acquis* and international principles

There is no EU *acquis* regulating the types of centres that Member States should adopt to detain irregular migrants, or the numbers that should be detained in a single centre or throughout the territory of a country.

c) Other current practices

The examples provided by other European Countries mainly show that it is preferable to deal with a low number of residents per centre and usually several centres are built, also in order to separate different categories (i.e. families, single men, migrants to be returned in few days, etc).

Belgium has currently 5 centres in total; the biggest centre can accommodate 172 individuals. The full capacity of all centres is 508 persons.

Hungary has 8 centres in total. The biggest closed centre can accommodate 50 individuals, while the community centre (which is an open centre) can accommodate 75 individuals.

Poland²³ has a centre that accommodates up to 200 individuals and has facilities for families, females and males. There are also 25 deportation jails that are located in the main buildings of the police stations of each district. Based on the Polish practice, it was recommended that for management and security reason, a centre should not accommodate more than 200-300 individuals.

d) Recommendations

- The above considerations (on management and data available) as well as Albanian specificities (population, territory, etc.) lead to the solution of a centre with a capacity to normally treat 100 people, reaching at a maximum of 150. The centre should allow the possibility of an extension of up to 200 people if necessary in the future.
- This provision allows accommodating short-term needs (i.e. low number of migrants currently present, efficiency in managing small centre, etc.) while considering changing circumstances over the following years (i.e. entering into force of the EC-Albanian Readmissions Agreement, future trend of immigration to Albania, etc.).

²¹ Refer to the report of the Workshop organised by IOM in the framework of this project on *Sharing best practices of return policy and legal practices from the EU and from Countries of Destination* and that took place in Tirana on 3-5 October 2005.

²² Refer to the Human-Material Component below.

²³ Refer to Return Migration. Policies and Practices in Europe, IOM, January 2004.

4.1.2. The scope of the centre and the different categories of irregular migrants concerned²⁴

a) The Albanian situation

- The Law on Border Guard and Control (Article 5) foresees that foreign citizens who refuse to be returned or have entered Albania illegally are sent in the reception centre for foreigners, but it does not qualify the grounds for detention and the scope of this “reception centre”. Other laws also do not mention the scope of a potential reception centre.²⁵
- Two National Reception Centres accommodating VoTs and Asylum Seekers already exist in Albania.
- Albanian law does not list all the categories of irregular migrants, who are not VoTs or Asylum Seekers, which could be detained in a closed reception centre. The Law on Foreigners clarifies which are the categories that will be subject to forceful accompaniment,²⁶ without mentioning the period of detention.
- The Regulation *On the functioning of the reception centres and temporary treatment of the foreigners who are not asylum seekers* based on DCM 46/2002 (hereinafter “the Regulation” or “DCM 46/2002”) foresees only the treatment of the foreign nationals who are issued an expulsion order and does not give further specification.
- The DCM *On the conditions for entry, stay, and treatment of foreigners in Albania* (hereinafter “DCM 439/2000”) confuses the scope of the centre with the potential means of functioning. The Article 2 of this DCM states that, as part of the State Police and created for the security of the foreign nationals, the centres perform:
 1. First aid and assistance;
 2. Respect for the traditions, culture and religion;
 3. Guarantee for the security of the foreign nationals treated there;
 4. Creates a warm and harmonious atmosphere between the communities and the integration in the community life of this centre;
 5. The protection of the personal data of every foreign national;
 6. Preparation for the leave of the foreign nationals to the country of origin”.

A more in-depth explanation of the functions to be performed in the centre in line with the DCM 439/2000 is given in the Human-Material Component below.

b) The EU *acquis* and international principles

As a general principle, a person may only be deprived of his or her liberty with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if the Albanian authorities have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures.²⁷ Article 5, paragraph 1 of the ECHR on the right to liberty and security of persons states that “no one shall be deprived of his liberty save in the case of [*inter alia*] the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition”. In all circumstances, however, a person’s arrest and/ or detention must respect legal procedures.

²⁴ For more details, refer to the Legal Component below.

²⁵ *Ibid.*

²⁶ Refer to the Legal Component.

²⁷ Guideline 6, paragraph 1, of the “Twenty Guidelines on Forced Return of the Council of Europe, September 2005 (hereinafter: COE Guidelines on Forced Return).

Article 23 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (hereinafter the "Schengen Agreement") states that:

1. An alien who does not fulfil or who no longer fulfils the short visit conditions applicable within the territory of a Contracting Party must in principle leave the territories of the Contracting Parties without delay.
2. An alien who holds a valid residence permit or temporary residence permit issued by another Contracting Party must enter the territory of that Contracting Party without delay.
3. Where such an alien has not left voluntarily or where it may be assumed that he will not so leave or if his immediate departure is required for reasons of national security or public policy, he must be expelled from the territory of the Contracting Party within which he has been arrested as laid down in the national law of that Contracting Party. If the application of that law does not permit expulsion, the Contracting Party concerned may allow the person concerned to remain within its territory.
4. Expulsion may be effected from the territory of that State to the alien's country of origin or to another State to which he may be permitted entry, in particular under the relevant provisions of the re-entry agreements concluded by the Contracting Parties.

Also the Article 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) deals with the subject.²⁸

c) Other current practices

In **Belgium**, the main scope of closed reception centre is to detain persons pending removal (i.e. for irregular migrants, rejected asylum seekers, etc.). The categories of migrants accommodated in the centres include, *inter alia*:²⁹

- Aliens withheld at the border and refused access to the territory on the basis of Article 3 of the Immigration Act (undocumented or insufficiently documented aliens, insufficient funds, threat to public order or national security, etc.) in case they can not immediately be returned under the possibility of the carriers (valid by 24 hours);
- Aliens apprehended in-country in a situation of illegal sojourn or are a threat to public order/national security or are working without a permit given an order to leave the country (Article 7);
- Aliens who did not comply with a removal order (Article 27);
- Rejected asylum seekers;
- Asylum seekers who are considered to be a danger to the public order or to national security.

In **Hungary**, the Aliens Act states that the main scope of the reception centres is detention for non-admissibility into the country (detention for refusal) and detention in preparation for expulsion. In cases of detention for refusal, the immigration division of the Border Guard may detain the foreign national if it has taken steps to return the persons concerned within 30 days from the date of their apprehension or from the date of transfer as stipulated in a readmission agreement. In cases of detention in preparation

²⁸ The Albanian Government National Action Plan on Migration (National Strategy on Migration) foresees the ratification of this document under the framework of Component C "the Elaboration of an appropriate Legal Framework for emigration and immigration".

²⁹ The Article 4 of the Belgian Royal Decree of 02.08.2002 states that "The centres are responsible for accommodating:

1° the foreign national to which is applicable the art 74/5, § 1, 2°, of the law;

2° the foreign national to which is applicable the art 74/6 of the law;

3° the foreign national to which is applicable the art 7, 25 and 27 of the law".

for expulsion, the regional immigration authority has the power to detain foreign nationals to secure the conclusion of any pending proceeding if the identity of the migrants is not clear.

Section 48 of Hungary's Aliens Act states that:

- In order to carry out the return procedure, the Border Guard shall order the foreign national in question to remain in a designated place of the frontier zone or the airport during the day of his or her arrival by air, water, railway or road, or on the means of transport that is scheduled to depart, or to transfer onto another means of transport of the carrier that is liable to provide return transport for the person in question.
- If the return procedure cannot be carried out forthwith, the foreign national in question shall remain in a designated place of the frontier zone if arriving by water, railway or road transport for maximum forty-eight hours, or in a designated place of the airport for maximum eight days if arriving by air transport.
- When the foreigners cannot be returned within the period specified under paragraph (2), the rule governing expulsion for aliens policing purposes (Article 48) shall be applicable to the foreigners.

d) Recommendations

- Detention should be always considered as last resort. It should only be used if it is necessary to prevent the risk of absconding and if the application of less coercive measures is not sufficient. In accordance with the developing EU *acquis*, temporary custody should be limited and bound to the principle of proportionality.
- Detention may be possible to identify the migrant and to obtain the documents needed for his/her removal. There may be other reasons for detaining persons (i.e. to ascertain non-admissibility into the country, etc.) but these shall be always stated clearly in the national legislation.
- The purpose of the centre is strictly linked to the categories of migrants that will be accommodated in the centre itself.³⁰
- The main group of irregular migrants being detained in closed reception centres should include foreigners who are subject to removal and who are not willing to return voluntarily or whose immediate return is not possible.
- More specifically, categories of migrants that could be subject to removal are the following:³¹
 1. Third country nationals who have been readmitted to Albania based on the readmission agreements that have been or will be signed with EC and other countries, who do not have any legal status in Albania and are not asylum seekers;
 2. Third country nationals whose asylum application has been refused and who have exhausted all appeals against the decision, who do not wish to return voluntarily and who have failed to comply with the return order;
 3. Third country nationals who have entered the country clandestinely, undocumented, insufficiently documented and/or with forged documents, and who have been identified as either staying in or transiting through Albania;³²
 4. Third country nationals who set out with the intention to live in the country permanently and working illegally there;³³

³⁰ See also the Legal Component.

³¹ See the Compilation of Best Practice in Return Management in Selected EU Countries and Romania, IOM, 2005.

³² See also the Legal Component. The Penal Code considers the illegal entry and transit a penal contravention but in most of the cases it is not prosecuted.

³³ This is in line with the EU Recommendation of 1 June 1993 concerning checks on and expulsion of third-country nationals residing or working without authorisation (WGI 1516). This category is not explicitly mentioned as such in the Articles 46 and 47 of Law on Foreigners and should be incorporated within the Law. See the Legal Component.

5. Overstayers³⁴ - people who enter the country legitimately and then stay beyond the permitted period (thus the removal order is issued);
 6. Individuals under a pre-existing ban on entry or stay;
 7. Individuals subject to removal on the basis of existing international agreement;
 8. Individuals representing a threat to public order and national security;
 9. Individuals representing a threat to public health.
- The last two categories should be treated on a case-by-case basis, depending on personal circumstances and the kind of threat posed by the persons concerned. For example, category n. 8 could be subject to a stricter regime of detention and category n. 9 could be kept in hospitals or a place where they can receive proper medical care without posing risks to others.
 - Another category of people that can be detained in the closed reception centre are those foreigners whose identity and admissibility within the territory cannot be ascertained due to a lack of clarity. While the competent authorities carry out investigations to ensure and clarify the above, the concerned individual can be treated in the closed reception centre.

4.1.3. The institutional bodies involved

The institutional structure that deals with migration issues is generally defined at the national level. Not many common standards exist in this regard, although some common features can be outlined from the experiences of other European countries. For this reason, the sections on the EU *acquis* and international principles for the issues below are not very developed.

The institution responsible for running the centre

a) The Albanian situation

Based on the Article 3, paragraph b, of the Regulation *On the functioning of the reception centres and temporary treatment of the foreigners who are not asylum seekers*, the Central Directorate of Border Police, now DBM,³⁵ is responsible for:

- the management and for the good functioning of the centre;
- the supervision of the operation of the activities of the centre;
- the assurance of respect of the rules by the foreign nationals treated in the centre.

However, the law does not indicate which sub-structure within the DBM should be responsible for running of such a centre.

b) The EU *acquis* and international principles

The EU *acquis* and International principles have not been elaborated here because few common standards exist on this issue.

c) Other current practices

In **Belgium**, the entity responsible for running detention centres for irregular migrants is the *Office of Etrangers*, under the Ministry of Home Affairs.

³⁴ EC Recommendation of 1 June 1993 concerning checks on and expulsion of third-country nationals residing or working without authorisation (WGI 1516). See also Article 46 of the Albanian Law on Foreigners.

³⁵ At the time when the Regulation was drafted and adopted the official name of the DBM was Central Directorate of Border Police.

In **Hungary**, the two main entities responsible for migration issues are the Border Guard (BG) and the Office for Immigration and Nationality (OIN). Both entities are dependent on the Minister of Interior and independent of one another. The Border Guard works as alien policing authority (for return, rejection, readmission of foreigners and management of detention centres). It also works as an investigation authority (i.e. on trafficking in human beings; violation of entry and immigration ban; document forgery; etc.) and it deals with violation of regulations related to border areas and border crossing points (i.e. illegal crossing of borders, violation of passport regulations, etc.). The Office for Immigration and Nationality is the government agency responsible, *inter alia*, for making decisions and carrying out tasks related to detention and expulsion and for running the community centre, which is an open centre.

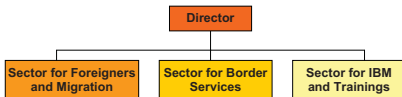
d) Recommendations

- Based on current national legislation, and the experiences of other EU member states, it is recommended that the DBM (under the MOI) be responsible for handling irregular migrants who are neither asylum seekers nor VoTs and for running the planned centre for irregular migrants.
- Based also on Measure 10 of the Action Plan of the National Strategy on Migration, DBM is the MOI's directorate responsible for planning, renovating, building and running premises for the detention of third country nationals waiting to be returned.

The structure of the DBM and a future entity responsible for running the centre

- Under the current structure of MOI, DBM is part of the General Directorate of the State Police and reports to the Deputy Director of the State Police in charge of operational management.
- The Sector for Foreigners and Migration in DBM is responsible for handling all foreign migrants (regular and irregular); for example, it issues residence permits for regular migrants and return the irregular ones.
- Since March 2006, the DBM is the main entity responsible for pre-screening and identifying all categories of irregular migrants in Albania. In this process other governmental structures, in particular within the MOI, will play a role of referral institutions for different categories of migrants.³⁶

The Flowchart below shows the current structure of the DBM:



Future Perspective

The National Strategy on Migration's Action Plan foresees the creation of a sector on return and readmission to assist the GoA in implementing existing bilateral readmission agreements and the future Readmission Agreement with the EC. It has been suggested this sector could also be responsible for supervising and managing the centre, as well as for carrying out various activities related to the handling and removal of irregular migrants. In order to create such a structure, the current DBM would need to undergo some form of internal restructuring to allow clear division of labour. Hence, the tasks

³⁶ See Section of this component on Coordination with Other Centres and Official Authorities.

of the existing Sector for Foreigners and Migration should be reviewed in order to allow transparent cooperation with the soon to be established Sector for Return and Readmission.

Possible tasks of the DBM in regard to irregular foreigners

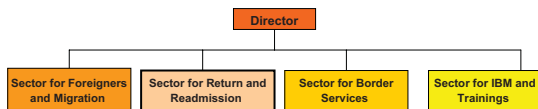
In order to ensure the correct handling of irregular migrants accommodated in the centre, the DBM could carry out the following activities (some are already being carried out by the Sector for Foreigners and Migration):

- Keep close contacts with district police on the status of the foreigners, acting as a contact point for the police on irregular immigration (already in place);
- Check the status of the foreigners through the information gathered by the police (already in place);
- Instruct the police on how to proceed with irregular migrants (already in place);
- Assist and follow-up the cases of the foreigners willing to return voluntarily;
- Issue return decision and removal orders according to the law;
- Deal with third country nationals readmitted under readmission agreements;
- Organise direct removals if the irregular migrant possesses valid travel documents;
- Issue detention orders³⁷ and keep the foreigners pending removals;
- Supervise and monitor the closed reception centre;
- Receive and analyse regular reports on the irregular foreigners treated in the closed reception centre;
- Request the assistance of diplomatic representations on the provision of the necessary travel documents for the migrants detained pending removal;
- Organise interviews to disclose the identity of the irregular migrants with the assistance of the consular staff, etc;
- Organise the travel arrangements for the execution of removal orders.

Recommendations

During the working groups on institutional issues, IOM presented two possible scenarios for the new internal structure of the DBM.

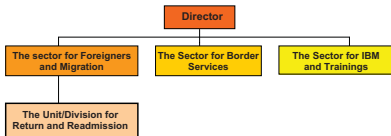
Scenario No. 1: This scenario foresees the creation of a fourth sector within DBM with specific functions on return and readmission (on the same level of the three already existing).



Scenario 1 would relieve the Sector for Foreigners and Migration of some of its competencies and turn them over to the new Sector for Return and Readmission. This structure would ensure that the new entity has direct communication with the Director, who would also be directly responsible for monitoring the activities of the return and readmission. Some of the functions of the Sector for Foreigners would therefore need to be transferred to the new Sector for Return and Readmission. In order for this scenario to be effective, a clear division of tasks and a clear communication and information exchange are necessary.

³⁷ See the Legal Component, section on "Legislation on detention" for further details.

Scenario No. 2: This scenario foresees the creation of a Unit depending on the Sector for Foreigners and Migration, with specific functions on return and readmission.



This scenario might be more effective than the previous one and would not bring many changes to the way that activities are run and monitored by the DBM. There is already one staff member in the Sector for Foreigners and Migration who is responsible for return and readmission. Since some of the functions and part of the structure are already in place, it would be much easier to expand and strengthen the capacity of the Sector for Foreigners and Migration. A Unit within the Sector could reduce bureaucracy.

Based on the functions to be assigned, and on the practices of other EU Member States, any entity responsible for return and readmission should constitute at least 4 experts in order to clearly divide the tasks between them (readmission of own nationals, readmission of third country nationals, identification and liaison with foreign consular representations in Albania, executing the return, etc.). The number of people involved should take into consideration the budget allocated to DBM and the future developments within the directorate.

Recommendations

- Participants in the assessment identified Scenario 2 as the most appropriate and efficient way of restructuring the DBM.
- The Sector for Foreigners and Migration would be the competent authority to issue return decision/removal orders. In many European countries, an administrative body issues the return order while the border police execute it. Given the Albanian current situation and the limited resources, having DBM in charge of both functions is an effective interim model until a sustainable alternative can be found. Once a removal order has been issued, the Sector/ Unit for Return and Readmission should be responsible for the needed measures to facilitate removal, including the treatment in closed reception centres of third country nationals readmitted in Albania under the EC/Albania RA as well as other irregular migrants subject to detention. The Sector for Return and Readmission should also supervise that the police execute removal orders³⁸ according to rules and regulations.
- In general, the Detention Order pending removal is not penal but an administrative order. Therefore, the detention order can be issued by Minister of Interior or by the Director of DBM.³⁹
- The responsible entities and their competencies should be outlined in more detail in a new Law on Foreigners that should be drafted.⁴⁰ The new Law should also determine the responsibilities of each level of the organization's hierarchy.

³⁸ See also Article 55 of the Law on Foreigners.

³⁹ In line with the last EU provisions, the authority issuing a detention order generally should be a Court. In any case, the Court should review (within 72 hours) the order issued by an administrative body. Refer also to the Legal Component.

⁴⁰ Refer to the Legal Component.

4.1.4. Preventing abuse of power

The Albanian situation

- The Ministry of Interior is the main central authority responsible for asylum, migration, counter trafficking and data collection on migration, but these functions are split among various different bodies. The Directorate for Refugees (DFR) is a structure within the Ministry of Interior and is responsible for asylum issues and for Refugees. The Directorate for the Management of Information and Technology is responsible for collecting and processing data, and for training police officers that use the data. There are separate entities within the Ministry of Interior that are responsible for counter trafficking and for victims' assistance. None of the entities report directly to one another and there is limited exchange of information and data.
- Given that the border police has both administrative powers (it issues return and expulsion orders) and executive powers (it carries out the orders), the MOI or an independent agency should carefully monitor and supervise the DBM to avoid any abuse of power.⁴¹ In particular, independent agents, i.e. human rights commissions and NGOs, ombudsman, etc. should also have a role in monitoring all the procedure of handling, detaining⁴² and returning irregular migrants, in order to ensure the full respect of human rights standards and compliance with legal provisions. Moreover, all the aspects that relate to the handling of irregular migrants, including their temporary custody, should be clearly and fully set out in the law, also in order to avoid excessive discretion by the responsible bodies.

Recommendations

- In the short term, and as an interim measure, it is recommended that the DBM establishes an entity, possibly at unit or sector level, that would be responsible for return and readmission issues. This entity should also be responsible for any facilities designed to accommodate irregular migrants. This entity should function only until responsibilities have been clearly divided between existing entities.
- In the long term, eventually, Albania will be required to set up a permanent entity within the MOI, such as a Migration, Asylum and Nationality Directorate. This entity should potentially work independently from the State Police and in parallel with other administrative directorates without any police function.⁴³ In this way, there will be an entity with administrative powers to issue removal orders, while the border police could implement the order with its executive function. The creation of such an entity depends on sufficient state resources and it will be possible only once the functions on return and detention have been consolidated within existing entities.
- The administrative structure of a future directorate which incorporates migration and asylum issues could include:
 1. Sector for Foreigners and Migration and Sector for return and readmission;
 2. Sector for passports and Nationality;
 3. Sector for Asylum and refugees.
- Such administrative body would need to be supported by the allocation of adequate financial and human resources.⁴⁴ Effective communication and information exchange mechanisms need to be set up between the Border Police in the regions and the Sector for Border Police and Migration.

⁴¹ The Article 46 of Law on Foreigners envisages that the competent authority within MoPO issues the return/expulsion order and not an authority within the State Police.

⁴² For a more detailed description of the monitoring activities in the closed centre see the Human-Material Component.

⁴³ Discussions are ongoing with regards to the restructuring of DBM. Some suggestions propose that DBM become more centralised with a separate budget within the State Police. Other proposals suggest that DBM become a separate entity from State Police and become an independent agency within the Ministry of Interior.

⁴⁴ Restructuring on such a magnitude requires significant human and material resources, and should be considered within the next 5-7 years. This timeframe should enable correspondence with the implementation of the National Strategy on Migration and existing structural reform within the Ministry.

4.1.5. The coordination with the other centres and other official authorities concerned

a) The Albanian situation

- The irregular migrants identified as VoTs are treated in the NRC for VoTs. Those that are found in the territory of Albania or at the borders and who desire to return voluntarily to their country of origin are also accommodated at the NRC for VoTs as per the MoU between IOM and MOLSAEO. Those third country nationals that apply for asylum are referred to the NRC for asylum seekers.
- The coordination between different institutions starts after the foreigners have gone through the pre-screening and once they have been identified by the Border officials as VoTs, asylum seekers and individuals who wish to return voluntarily to their country of origin.
- Based on the individual case, the responsible border officials may contact respectively the anti trafficking unit or the DfR within Mol for more specialised assistance on the case. After the irregular foreigner has clearly been identified as belonging to one category then the border officials can refer the case to the responsible body.

b) The EU *acquis* and international principles

No EU *acquis* or international principles exist on how to coordinate between different entities on this issue.

c) Other current practices

A detailed analysis of how structures coordinate in the EU Member States was not carried out.

d) Recommendations

- The DBM should refer to the DfR the cases of irregular migrants that request asylum and cases of possible victims of trafficking to the MOLSAEO. To this purpose specific focal points should be appointed in the latter two institutions (as already addressed in the Pre-screening hand-over process).
- The DfR should refer to DBM cases of irregular migrants that are refused asylum and have exhausted the appealing procedures, to be treated, if necessary, in a closed reception centre. The Law on Asylum foresees that once the asylum request is rejected, asylum seekers are to be handed over to the authority responsible for return, which in this case is the DBM.⁴⁵ DRF should also refer to DBM individuals who have withdrawn their asylum application and are irregular.
- The National Social Services within MOLSAEO and the responsible entities within the MOI should refer to DBM those individuals treated in the National Centre for VoTs that pose a threat to public order and who do not require the protection of the Albanian state.
- Individuals who have been referred to the closed reception centre for irregular migrants who are later identified as VoTs, should be directed to the focal point in MOLSAEO and referred to the relevant Centre.
- The focal point in MOLSAEO should contact DBM when they come across cases of illegal employed or illegally resident foreign nationals.
- In no circumstances should minors be referred to the closed centre; in the case that a minor has been identified as such he/she should be referred to the relevant entity (at present the National Social Service).
- It is recommended that a competent authority be identified to coordinate the work of the relevant aforementioned institutions and to ensure the inter-institutional cooperation. The relevant institutions could also agree to sign a Memorandum of Understanding between them in order to achieve the above-required cooperation.

⁴⁵ To date there have not been cases of rejected asylum seekers, no individual has been forcefully returned yet.

4.1.6. Voluntary return

a) The Albanian situation

At present, assisted voluntary return (AVR) is possible thanks to IOM on the basis of a MoU signed with the Albanian authorities. Individuals who are eligible for return assistance include: irregular migrants apprehended by the Albanian authorities; irregular migrants stranded in Albania who voluntarily request to be returned to their country of origin and asylum seekers whose application have been rejected and have no means to return on their own. A standard package is provided to the returnees, including information, psychological assistance, transportation and referral to reception facilities prior to return.

b) The EU *acquis* and international principles

According to EU norms, priority should be generally given to voluntary return and voluntary return should be actively promoted.⁴⁶ It is also commonly agreed that voluntary returns work and are preferred to forced returns, both in terms of humanity, cost effectiveness and sustainability.

IOM remains convinced that voluntary return (assisted or not) is, whenever feasible, the most desirable form of return because it takes into account the person's decision, allows the returnee to prepare for the return and avoids the stigma of deportation and its negative repercussions for successful reintegration. In addition, it diminishes the likelihood of repeat irregular migration. Moreover, consideration should be given to the overall cost of such assisted returns, especially when compared with the cost of extended stays, which ultimately end in deportation.⁴⁷

An issue that requires further elaboration by the Albanian authorities is the stage of the return process until which an irregular migrant can benefit from a Voluntary return programme. It must also be clarified up until which point an individual can opt to return using his/her own funds. At present, no common standards and clear indications are available on this issue.

c) Other current practices

Most EU Member States allow persons issued a return or removal order to return voluntarily before forced removal is executed. AVR is not, generally speaking, enshrined in national law but it is implemented through administrative and operational agreements with partner agencies such as IOM, NGOs and others.⁴⁸

The possibility to return voluntarily is often given to rejected asylum seekers, individuals who have withdrawn their asylum application, victims of trafficking, and, at times, to irregular migrants. In some European countries, irregular migrants are offered the possibility of voluntary return even while they are detained in closed reception centres. In **Belgium**, for example, irregular migrants are given the chance to return through assisted voluntary return programmes at any stage of the return process, even when they are in a closed reception centre. The **Netherlands** is implementing a pilot project that would allow irregular migrants to participate in voluntary return programmes while in detention.

⁴⁶ The voluntary return as priority is stated in the item 2.2 of the Green Paper *On a community return policy on illegal migrants*, COM (2002) 175 final. Also the Guideline 1 of the COE Guidelines on Forced Return stresses this point.

⁴⁷ See Assistant Voluntary Return and Reintegration Programmes at http://www.iom.int/en/who/main_service_areas_assisted.shtml.

⁴⁸ See Return Migration Policies and Practices in Europe, IOM (2004: 15).

d) Recommendations

- As outlined in the EU *acquis* and in line with IOM position, all individuals should be given the possibility to remove themselves voluntarily once they have received a removal order.
- Individuals who opt for voluntary return should generally not be detained.
- A voluntary return programme could be offered to irregular migrants at different stages of the return process. It should be clarified up until which point an individual can opt for voluntary return.
- Individuals in closed reception centre should be generally allowed to benefit from AVR Programmes. Such a decision might be subject to the revision of the relevant government structures.
- Third country nationals readmitted to Albania under readmission agreements should also be offered the possibility to return voluntarily once they have entered the territory of Albania. Readmitted foreigners should also be given access to AVR programmes.
- Reference to voluntary return should be determined in a new law on foreigners.
- Upon agreement with the Government of Albania, IOM could play a role in promoting and implementing AVR programmes.

4.1.7. Alternatives to detention

a) The Albanian situation

Currently there are no alternatives to detention envisaged for irregular migrants awaiting removal, and it is not clear what options are offered to irregular migrants found within Albania. Irregular migrants wishing to return voluntarily are accommodated at the NRC for VoTs.

b) The EU *acquis* and international principles

The EU *Acquis* stresses that less coercive measures should be preferred to detention since these are more humane and more cost effective.⁴⁹ Indeed, temporary custody should only be used as last resort, to prevent the risk of absconding and if the use of less coercive measures is not sufficient. The guarantees afforded by Article 5 of the ECHR include that detention of the person should be limited to certain specific circumstances where there are objective reasons to believe that he/she will not comply with the order (for example if the time limit for departing from the territory has passed and the alien has changed his/her place of residence without notifying the authorities of a change of address, if he/she has not complied with the measures adopted to ensure that he/she will not abscond, if he/she has in the past evaded removal).⁵⁰

In particular, the most common alternatives to detention are:

- Regular reporting to the responsible authorities;
- The deposit of a financial guarantee;
- The handing over of documents (passport or other identity documents) to the authorities;
- An obligation to stay at a designated place;
- Other measures to prevent the risk of absconding.

⁴⁹ Article 14(1) of the Commission Proposal for a Return Directive; Guideline 6(1) of the COE Guidelines on Forced Return. Also the UNHCR's Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (1999) provides the same list of possible alternatives.

⁵⁰ Commentary to the COE Guidelines on Forced Return – Guideline 6 (1).

Since these measures constitute restrictions on the right to move freely, to choose one's residence or to the right to respect for private life, they should be proportionate and lawful, in respect of the conditions defined in Article 2(4) of Protocol No. 4 to the ECHR and Article 8(2) of the ECHR.

Alternatives to detention should be considered based on individual circumstance and the personal history and in particular in case of vulnerable categories of irregular migrants (such as minors,⁵¹ families, persons with mental and physical diseases, individuals with trauma, etc.).

c) Other current practices

To date, there has been limited testing of alternatives to detention in the field of immigration and international data on the migrants' compliance with removal orders is very limited.⁵² Usually, these measures have been mostly used for asylum seekers, rejected asylum seekers and vulnerable categories.

The **United Kingdom** has made use of a relatively wide range of alternatives to detention, including:

- *Bail*.⁵³ Detainees may be released on bail by submitting an application to a chief immigration officer or port, or to an immigration judge at the Asylum and Immigration Tribunal. If bail is granted, they will be bailed to live at an address agreed by the court, often with friends or acquaintances, that agree to act as 'surety' guaranteeing to keep in touch and pay the fee in case the migrants abscond.⁵⁴ Bail can therefore be considered as an alternative to detention, once detention has already been employed but is no longer justified (see below).
- *Reporting*. Migrants must travel and regularly report at special centres. While reporting is clearly preferable to detention, sometimes it is considered invasive and difficult to comply with, especially for families.
- *Electronic monitoring*. Section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act (2004) enabled electronic monitoring of all adults subject to immigration control. Monitoring mechanisms include voice recognition, electronic tagging and tracking. As with reporting, tagging is clearly preferable to detention but, at present, there is no publicly available information on the effect of electronic surveillance on absconding rates.⁵⁵

In **Hungary**, the compulsory place of confinement is designated at a community shelter, if the foreign national is not able to support himself, and has no adequate place of abode, financial resources, income, or sponsor/relative who can be compelled to provide support. The cost of confinement in a community hostel is usually borne by the foreign national, unless he is issued a residence permit on humanitarian grounds. Only after foreigners have seriously or repeatedly violated the codes of conduct of the place of compulsory confinement, or have failed to report as instructed, they may be ordered, by the immigration authorities, to be detained.

In **Slovenia**, foreigners who are caught for the first time in an irregular status, or for whom there is no risk of absconding, are usually treated in open community centres where they are free to leave during the day.

⁵¹ Detention has a well-documented detrimental effect on the development and emotional and physical well being of children, who may suffer depression, changes in behavior and confusion in addition to refusal to eat, weight loss, lack of sleep, etc. In this regard, see for example, Coles, E (2003), *A Few Families too Many: The detention of asylum seeking families*, BID.

⁵² UNHCR, *Alternatives to detention of asylum seekers and refugees*, Ophelia Field with the assistance of Alice Edwards, External Consultants, April 2006.

⁵³ In 2002, South Bank University conducted a research (*Maintaining Contact: What happens after detained asylum seekers get bail?*) into outcomes for asylum-seekers whose claims had failed, who were considered 'high flight risks' and who had been released on ordinary bail conditions. This group complied at 80 per cent with no other intervention.

⁵⁴ BID/LPA (2003), *Challenging Immigration detention: a best practice guide*.

⁵⁵ *Alternatives to immigration detention of families and children*, a discussion paper by John Bercow, MP, Lord Dubs and Evan Harris, July 2006.

In **Sweden** detention is rarely used, and the maximum detention period for children under 18 years of age is three days, with a possible extension to six days in extreme circumstances.⁵⁶

In **Canada**, the state-funded Failed Refugee Project provides counselling and practical assistance to asylum seekers whose claims have been refused. Clients of the project are given 30 days to plan their return. In 2001/2002, 60 per cent of the project's clients returned to their country of origin after this period, and a further 20 per cent did so after a follow up visit from staff members of the project. Thus, overall 80 per cent of the project's clients returned without having been subjected to punitive measures like detention and forced removal.⁵⁷

In most of the European countries, alternative to detention are offered to vulnerable categories, such as sick people, people with mental or physical disabilities, minors, etc.⁵⁸

d) Recommendations

- Non-custodial measures should always be considered as alternatives before resorting to detention, since they are more humane, more effective and less expensive.
- These measures may be: regular reporting to the responsible authorities; the deposit of a financial guarantee; the handing over of documents; an obligation to stay at a designated place, the use of community open centres, etc.
- Alternatives to detention should be made available to irregular migrants, after evaluation of the specific case and in particular to vulnerable categories (minors, persons suffering of trauma or other diseases, etc.).⁵⁹
- The use of these measures should be actively promoted by the responsible authorities and the concerned irregular migrants should be fully informed of these options.
- To fulfil the above recommendations, the GoA should soon establish a working group charged with assessing which alternatives to detention could be implemented in Albania and how. The proposed measures should be considered in greater detail by the Albanian authorities on the basis of need and economic circumstances. Albania should eventually consider establishing an open community centre, for those irregular migrants who have no adequate abode, financial resources, income, or sponsors/relatives who can be compelled to provide support.

4.1.8. End of detention and post-detention measures⁶⁰

a) The Albanian situation

At present there are no post detention measures in Albania.

b) The EU *acquis* and international principles

Detention is considered unlawful not only in case of procedural irregularity or official arbitrariness,

⁵⁶ Alternatives to immigration detention of families and children (kjo fjalë në italis), a discussion paper by John Bercow, MP, Lord Dubs and Evan Harris, July 2006.

⁵⁷ Ibid.

⁵⁸ Research commissioned by Save the Children and published in February 2005 considered in detail possible alternatives and explored models employed by other states.

⁵⁹ See the section on vulnerable categories, under the Human-Material Component below.

⁶⁰ See the Legal Component.

but also when state authorities do not pursue proceedings leading to expulsion with 'due diligence'.⁶¹ In other words, detention pending removal is only justified if it is considered necessary (i.e. to prevent the individual absconding) and/or as long as removal arrangements are in progress. If such arrangements are not executed with 'due diligence', i.e. with enough caution, the detention will cease to be permissible and the individual should be released.⁶² A Report of the Special Rapporteur on Migrant Workers has recommended: "Detention should end when a deportation order cannot be executed for reasons that are not the fault of the migrant".⁶³

Nonetheless, at the international level it is not clear which measures may be taken after the detention period has expired.

c) Other current practices

In the Netherlands, the police repeal custodial orders as soon as the grounds for issuing them are no longer valid. This means that the order will be repealed if it is no longer possible to continue remanding the alien in the interest of public peace, public order or national security, if there are no further obstacles to expulsion from the Netherlands, if there is no reasonable chance that the expulsion can take place in the foreseeable future, if the alien no longer belongs to one of the categories of persons that can be remanded in custody or if the alien states his intention to leave the Netherlands and is able to do so.⁶⁴

In Hungary, the law does not specify which are the post detention measures but different Articles (48/a and 53) of the Alien Act state only that: "Detention shall be terminated immediately when the grounds for detention therefore no longer exist". Article 46 (8) of the Alien Act foresees that "detention shall be terminated if all criteria for expulsion are satisfied, or it is decided that the expulsion cannot be executed". The regional immigration authority ordering the detention shall specify the place of compulsory confinement where the person in question is required to remain. After 12 months in the closed regime, individuals are automatically transferred to a community centre.

In Romania, individuals who are released once the conditions for their detention no longer exist are provided with tolerated stay. In other words, they are given a document that ensures they can be identified by the police, without incurring in further problems. This, however, does not give individuals the right to legal stay and individuals can be removed from the territory of the state at any stage should the reasons for removal be in place.

⁶¹ This principle derives from the fact that Article 5(1) of the ECHR imposes a restrictive reading of the situations where such deprivation of liberty is authorised, as these are exceptions to the fundamental right to liberty and security. The European Court of Human Rights has recalled that "any deprivation of liberty under Article 5 para. 1(f) ECHR will be justified only for as long as deportation proceedings are in progress". If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 paragraph 1(f) (Eur. Ct. HR, *Chahal v. the United Kingdom*, judgment of 15 November 1996, para. 113). Indeed, this implies that when it appears that the removal of the person within a reasonable period is unrealistic, the detention ceases to be justified and release must follow (Eur. Commiss. HR, *Caprino v. the United Kingdom*, Appl. No. 6871/75, dec. of 3 March 1978, YB ECHR, 21, p. 285, 295-296 (and DR, 12, p. 14)). The Human Rights Committee adopts a similar attitude under Article 9(1) of the International Covenant on Civil and Political Rights. The Human Rights Committee also considers that Article 9 of the ICCPR excludes detention for extended periods when deportation might be impossible for legal or other considerations (see e.g., Concluding Observations relating to the United Kingdom, (2001) UN doc. CCPR/CO/73/UK, para. 16).

⁶² Guideline 7 of the COE Guidelines on Forced Return.

⁶³ Report of Special Rapporteur, Member States, Gabriela Rodriguez Pizarro, *Migrant Workers*, submitted pursuant to Commission on Human Rights Res. 2002/62, E/CN.4/2003/85, 30 December 2002.

⁶⁴ Lower House of the States General, Parliamentary year 1998-1999 - 26 338, *Alien remand*, No. 1.

d) Recommendations

- The competent authorities should ensure that detained migrant are released as soon as the reasons for detention no longer exist or when the expulsion cannot be executed within the maximum period of detention.⁴⁵ The migrants are subject to alternatives measures or for instance granted tolerated status.
- In such cases, the competent authorities, in the Albanian case the DBM, could specify the place of compulsory residence where the person in question can remain or the time/frequency and place where he/she can report to the authorities or can be assisted to return voluntary. Reporting to a responsible authority does not represent a form of regularisation.
- To avoid the financial burden of holding an irregular migrant in a closed reception centre or of executing the return, the Albanian authorities could also consider temporary regularisation programmes. These programmes should be considered only when the number or flow of a certain group of irregular migrants becomes significant. In practical terms, this could mean issuing individuals who cannot be returned at the end of the maximum time of detention with temporary work permits that are valid until their return is possible. Such measures should be balanced within the context of a policy for combating irregular migration and improving migration management.
- Whenever the conditions for return exist (again) the migrant should be returned.
- The possibility of voluntary return (through personal financial means or through a programme of assistance) should be foreseen once the detention period has ended and given priority. In these cases, the government should consider to consult IOM and other relevant organizations to expand the existing opportunities for AVR.

CONCLUSIONS

Since there is no closed reception centre for irregular migrants in Albania, the institutional framework that has been proposed for running such a centre is based on recommendations made by the National Strategy on Migration and on current practices in several European countries. As the responsible authority that deals with irregular migrants that are neither asylum seekers nor VoTs, the DBM needs to increase its capacity to take over the new function of running the centre. It is suggested that a new Unit on return and readmission will be established within the DBM and that will be direct responsible for the management and functioning of the centre.

Given the Albanian situation, the institutional working group suggested the possibility of establishing a centre with a capacity to accommodate 100 people, with a maximum potential capacity of 150 individuals. The working group also agreed that, in the future, it should be possible to expand the centre to accommodate a total of 200 people. The centre is foreseen to treat those irregular migrants who are subject to removal and who are not willing to undertake voluntary return, and those for whom immediate return is not possible. The authorities should be very careful not to detain irregular migrants longer than the legal limits, ensuring they are released when grounds for detention no longer exist.

In line with European standards and practices, the Albanian authorities would need to explore alternatives to detention as a better approach to handle irregular migrants.

⁴⁵ To be sanctioned by law.

4.2. THE LEGAL COMPONENT

Introduction

Currently, there is no one single specific legal act that regulates the establishment of a Reception Centre. The legal basis for the reception of irregular migrants pending their removal, and the removal itself, is found in a number of vague and incomplete dispositions that are scattered in different documents (such as the Law on Foreigners, the Law on the Guard and Control of the State Border and some other by-laws). The establishment of a closed reception centre for irregular migrants in Albania requires the complete revision of the legal basis, which might include the aspects of removal and detention.

The legal component of this report is the result of an analysis and evaluation of the current legislation on detention and removal in Albania. This document should not be considered as exhaustive, as the main focus of the study was the creation of the closed reception centre. Other related issues, which were out of the main scope (i.e. carrier liability, physical removal procedures, etc.) have not been treated in detail and deserve future in depth analysis.⁶⁶ The aim of the work is not to provide a detailed and comprehensive gap analysis of the Albanian legislation vis-à-vis the EU *acquis*,⁶⁷ but, rather, to examine the main gaps in the present legislation in light of the EU *acquis* and international norms⁶⁸ and of the experience of selected countries. This component also takes in consideration existing strategies that partially cover these issues (i.e. National Strategy on Migration - Chapter on Return and Readmission).

For the elaboration of the document, the Albanian Legislation, the relevant legal acts of some EU countries and some documents produced at the EU level have been taken in consideration. Four main areas have been elaborated: a) the Albanian situation; b) EU *acquis* and international principles (where possible); c) practice from other selected European countries; d) general recommendations. The recommendations are generic enough to be valid also in other contexts, and also address the specificity of the Albanian case.

Assessment of the main gaps and Recommendations

General considerations on the legal basis for readmitting Albanian and third country nationals

The legal basis for the readmission of third country nationals is laid down in Article 11 of the Law on Foreigners, which states that, based on the obligations stemming from the readmission agreements concluded by the GoA, foreigners expelled by other countries who have departed from Albania will be readmitted to Albania. The legal basis is also contained in the existing Readmission Agreement

⁶⁶ These issues have been covered in a paper prepared under the post-assessment activities of this project, *Proposal for a system of handling irregular migrants in line with EU acquis and international principles*.

⁶⁷ This has already been done to a certain extent in the *Analysis of Albanian Immigration and Practice as compared to EU and International standards*, January 2004. Also the activities undertaken under CARDS Regional 2002/2003, "Establishment of EU compatible legal regulatory and institutional framework in the field of Asylum, migration, and visa issue" provide a kind of gaps analysis in line with the EU *acquis*.

⁶⁸ Most of the provisions presented refer to the Twenty Guidelines on Forced Return of the Council of Europe, September 2005 and to the Proposal for a Directive on *Common Standards and Procedures in Member States for Returning Illegally Stay of Third Country Nationals* (COM (2005)391 final (hereinafter: 'Commission Proposal for a Return Directive').

signed by Albania with other countries.⁶⁹ Once these agreements have been ratified by the Albanian Parliament, they supersede Albanian law.⁷⁰

4.2.1. The Legal basis for establishing and running a closed reception centre

a) The Albanian situation

- There is no specific Legal Act regulating the overall creation of one or more centres in Albania.
- Sporadic references to a closed reception centre are found in the Law on Foreigners, which mentions only “measures for forceful accompaniment in the transit place for foreigners” (there is no legal definition of what “forceful accompaniment” is, and there is no further explanation of “transit place”).
- The Law on Border Guard and Control (Articles 4 and 5) affirms that foreigners who refuse to return to their country of origin or who are caught in Albania after having entered illegally should be sent to centres for the temporary treatment of foreigners.⁷¹
- Other reference to this centre is made in the DCM 439/2000 “On the entrance, stay and treatment of the Foreigners in RoA” that mentions the creation of the centre by the MOPO (current MOI).⁷²
- Despite these vague references, Albanian Legislation does envisage the functioning of closed centres (upon establishment) in the Regulation for Functioning of the Reception Centres for non-asylum seekers approved by the DCM 46/2002.⁷³

b) The EU *acquis* and international principles

A person may only be deprived of his or her liberty in accordance with a procedure prescribed by law.⁷⁴ The detention of irregular migrants is a deprivation of liberty, even though not in force of a crime but as administrative measure. As such, the creation of a closed reception centre for irregular migrants and all the rules that regulate the functioning of a centre of this type shall be clearly stated in the law.

c) Other current practices

In all the cases taken into consideration, the creation and the functioning of centres for irregular migrants are regulated in specific legal acts or administrative by-law.

In **Belgium**, the creation of a closed reception centre for irregular migrants is envisaged by the Immigration Act of 15.12.80 and its executive Royal Decree of 08.10.1981. These provisions are developed in detail in the Royal Decree of 02.08.2002.

In **Hungary**, the creation of centres for irregular migrants is based on the Act on Entry and Stay of Foreigners (Aliens Act) adopted by the Hungarian Parliament in 2001.⁷⁵

⁶⁹ Albania has signed around 11 readmission agreements with countries like UK, Germany, Belgium, Bulgaria, Poland, Hungary, Romania, Italy, Slovenia, Check Republic, etc.

⁷⁰ See Article 116 of Albanian Constitution.

⁷¹ The Law on Border Guard and Control mentions also that the site for establishment of this centre and the rules for its functioning are established by a DCM.

⁷² Article 23.

⁷³ Please refer to the Human Component for a more in-depth analysis of this Regulation.

⁷⁴ Refer to Article 5 of ECHR and Article 9 of ICCPR.

⁷⁵ Government decree “Concerning order within the jails of the immigration police, of the security requirements of undertaking detention, of certain health requirements of detention” Jan. 30, 2003.

d) Recommendations

- A specific legal act or disposition should be enacted as soon as possible for the establishment of closed reception centres, as envisaged in the Law on the Guard and Control of the State Border.
- The Law on Foreigners should be amended to reflect the new reality emerging from the implementation of the Readmission Agreements, signed by the Government of Albania. Thus, a specific Article should be added mentioning the Reception Centre and in particular the purpose of the centre.
- All the technical aspects regarding the centre should be envisaged clearly by a Decision of the Council of Ministry (DCM).⁷⁶ This could allow for more flexibility in keeping up with the developments in the field, since a DCM is an act of lower rank than a law and, at the same time, it could bind all the existing bodies under the MOI that are involved.
- The DCM should include *inter alia*: the nature and scope of all centres to be established as well as the categories being detained; grounds for detention (referred to and by the Law on Foreigners); terms and procedures for detention; responsible institutions.⁷⁷
- Given the experiences of other EU countries and the complexity of the issue a general Framework Regulation, laying down the common standards for the internal functioning of all future centres and providing a uniform management of the centres, should be attached to the DCM. All centres should be established through the approval of a specific by-law that includes the location of the centre, the maximum number of residents, and the technical specifications (all in accordance with the respective DCM and the Law on Foreigners).
- All future closed centres should adopt their own internal regulation, which must be in compliance with the overall framework regulation.⁷⁸ All future internal regulations should be approved by the MOI to ensure consistency and compliance with the framework regulation.

4.2.2. Legislation regulating detention

a) The Albanian situation

The national legislation on detention is very scarce and it does not envisage clearly the process of detention of irregular migrants in the reception centres. Fragmented referrals are found in:

- a) LoF which mentions only "measures for forceful accompaniment in the transit place for foreigners". However, there is no legal definition of "**forceful accompaniment**".⁷⁹
- b) DCM 439/2000 which envisages that the illegal migrants are stopped by the state police in accordance with the legal disposition (but does not clarify what are the legal dispositions) in the centres envisaged for this purpose.
- c) Law on Border Guard and Control which foresees that the foreign citizen who refuse to return or has entered illegally is sent to the reception centre for foreigners.

⁷⁶ This is also established in the Law on Border Guard and Control.

⁷⁷ This decision could be an amended and addendum version of the existing DCM 439/2000 "On the entry, stay and treatment of the foreigners in the RoA" where a specific chapter must be added to specify the above mentioned issues.

⁷⁸ Refer also to the Human-Material Component below.

⁷⁹ The grounds for forceful accompaniment are:

⁴¹ The foreigner can not convince the authorities for the legitimacy of his/her entrance or residence in the territory;

⁴² It is necessary as a measure to guarantee the expulsion of the foreigner, whose admission or appeal process is still pending, and he/she might not comply with the decision for removal or expulsion;

⁴³ He/she is staying illegally in the territory of the Republic of Albania, and refuses to leave the country or declared so;

⁴⁴ He/she ignores the decision for removal or expulsion.

If "forceful accompaniment" is considered (mentioned also in the Law for Foreigners) as "detention", then the Article 75 specifies the grounds for detention ("forceful accompaniment").

b) The EU *acquis* and international principles

Persons may only be deprived of their liberty for the purpose of removal if this is in accordance with a procedure prescribed by law⁸⁰ and if the authorities have concluded that there are serious grounds to believe that there is a risk of absconding and that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures.⁸¹

The ICCPR protects the right to freedom of movement. In particular, its Article 9 states that "no one shall be subjected to arbitrary arrest or detention." The United Nations Commission on Human Rights clarifies: "The fact of irregular entry may indicate a need for investigation, and there may be other factors particular to the individuals, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal."⁸²

Article 5, paragraph 1(f), of the ECHR states that "everyone has the right to liberty and security of person"; "no one shall be deprived of his liberty save in the case of, *inter alia*, the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition." Thus, detention is not unlawful a priori. Detention is permitted in accordance with a procedure prescribed by law⁸³ and only in exceptional cases. The European Court of Human Rights has ruled that "a procedure prescribed by law" implies the notion of fair and proper procedure which means a procedure conducted by an appropriate authority and free from arbitrariness.⁸⁴ In 2002, the Court has recalled these principles in the *Conka* Judgment:⁸⁴ "Where the lawfulness of the detention is in issue, including the question whether a procedure prescribed by law has been followed, the ECHR refers essentially to the obligation to conform to the substantive and procedural rules of national law, but it requires, in addition, that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individuals from arbitrariness". If the country that detains a person meets these requirements irregular migrants awaiting deportation or extradition can be detained, albeit in exceptional circumstances, in accordance with Article 5, paragraph 1(f), of the ECHR.

c) Other current practices

In the cases examined, the main grounds for detention of irregular migrants are pending removal, usually when the time allotted to the alien to remove him-her self voluntarily has expired and when it is deemed necessary to check the conditions of the foreigner's regular stay in the country.⁸⁵

In the Netherlands, Article 26 of the Aliens Act provides a list of grounds on which aliens can be placed in custody: if the deportation of the alien has been ordered; if there are compelling reasons to suppose that the deportation of the alien will be ordered; if the alien has been denied the right to remain in the country pending the decision on whether an application for a residential permit is to be granted. Deprivation of liberty can be undertaken with a view to expulsion necessary in the interests of public policy.

⁸⁰ Article 9 of the ICCPR.

⁸¹ Guideline 6.1. of the COE Guidelines on Forced Return.

⁸² Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993 (1997). Moreover, Article 16 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* provides that "migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law".

⁸³ Judgment of 24 October 1979, *Winterwerp* case.

⁸⁴ Judgment of 5 February 2002, *Conka v. Belgium*.

⁸⁵ Refer to the Institutional Component, section on the "Scope of the centre".

In **Belgium**, foreign citizens that are withheld at the border and refused access to the territory in accordance with the law (either because they are undocumented or insufficiently documented, have insufficient funds, represent a threat to public order or national security, etc.) are sent to a facility located at the border, where they usually stay 36-48 hours. Detention is allowed when migrants cannot be removed immediately by the carrier. Aliens apprehended in the country and who are found to either be staying irregularly, to pose a threat to the public order and/or to national security, or to be working without a permit, can be given an order to leave the country or they can be physically removed, an action that calls for detention pending removal. Irregular migrants who have not complied with previous removal orders can also be placed in temporary detention.

d) Recommendations

- Detention (temporary custody) should be considered as last resort and issued only when there are serious grounds to believe that there is a risk of absconding and if the application of less coercive measures is not sufficient.⁸⁶
- The purpose of a closed reception centre should be to accommodate irregular migrants pending their removal after the removal order is issued and after all possibilities for voluntary return have been explored. Other purposes for the temporary custody could be to determine the status of migrants whose identity is under investigation by the relevant authority with a view of establishing their regularity or not.⁸⁷
- A closed reception centre for Irregular Migrants should not accommodate VoTs and Asylum Seekers, that fall under other type of centres and regimes.
- All by-laws that establish closed centres should clearly stipulate the categories of individuals to be detained. The provisions on detention in the current Albanian legislation should be redrafted to clearly define the grounds for detention. Article 75 of the Law on Foreigners should be redrafted in order to envisage detention and specify the grounds. Instead of citing grounds for 'forced accompaniment' the Article should clearly define 'detention' and 'reception centres'.
- The legal basis should also include the responsible authority that will issue and the one that will execute the detention order. The authority issuing the detention order could come from the Immigration Office (which in Albania currently corresponds to the DBM).⁸⁸ However, the authority that issues a detention order generally should be a Court. Given the situation in Albania and the probability that the DBM will carry out both functions, a court should be charged with reviewing the order within approximately 72 hours.

4.2.3. Length of detention

a) The Albanian situation

Currently, neither the Law on Foreigners nor other by-laws put a limit on the amount of time that foreigners may be detained in reception centres.

⁸⁶ Article 14 of the Commission Proposal for a Return Directive.

⁸⁷ See also Institutional Component. The categories that pose a threat to public health or security should not be accommodated in the detention centres but in centres where they can be availed respectively the necessary health assistance or the adequate surveillance possibilities.

⁸⁸ This is the situation in Belgium and the Netherlands. While the Commission Proposal for a Return Directive provides that the order for 'temporary custody' should be issued by the Judicial Authorities.

b) The EU *acquis* and international principles

Detention pending removal should be as short as possible. The maximum time limits being proposed by the European Commission is six months and temporary custody should not unduly be extended.⁸⁹ Moreover, temporary custody orders shall be subject to review by judicial authorities when the order has been issued, and at least once a month after that. Temporary custody may be extended by judicial authorities to a maximum of six months.⁹⁰ Detainees shall be informed promptly, in a language they understand, of the legal and factual reasons for their detention⁹¹ and the possible remedies.

c) Other current practices

There is considerable variation among EU member states concerning the duration of detention.

Belgium provides that the initial detention decision is valid for a maximum of 60 days. This can be extended with another maximum of 60 days if the possibility of an effective removal still exists but cannot immediately be executed. Any further extension of the detention can only be decided by the Minister for Home Affairs himself under certain conditions (only if the returnee constitutes a menace for public order or national security) and upon agreement of the District Court. Those additional extensions are valid for 30 days. There can be consecutive extensions of this type but the absolute limit is 240 days in total. Situation is different if the returnee refuses his physical removal. In this case he/she is "re-detained" and this is considered to be a new detention, not an extension of the existing detention decision.

In **the Netherlands**, the Dutch Aliens Act sets no legal maximum detention period. This does not mean however that the duration of detention pending removal is unlimited. In general, detention is lifted after six months. The initial maximum duration of a detention pending removal is 60 days, which can then be extended according to the procedures contained in the law.

In **Slovenia**, the law provides for a period of 6 months with eventual extension of other six months.

d) Recommendations

- Albanian national legislation should state that the detention period should be as short as possible and should foresee the maximum length of detention. The law should also provide mechanisms for regular judicial reviews (i.e. every month) to assess whether the detention is still valid and, if necessary, to extend the detention by a maximum of six months. This would ensure that the detention is in line with constitutional dispositions stipulating judicial review for all cases where freedom is deprived.
- It is suggested that the maximum length of detention be six months in line with the latest EU trends.⁹²
- The national legislation should clearly stipulate which authorities should issue the detention order.
- Due to the administrative nature of detention, a detention order may be initially issued by the MOI authorities, namely DBM, to avoid delays and extra burdens for the courts (which are not specialized *fora* to deal with this category of detained migrants).

⁸⁹ Article 14(2), (3) and (4) Commission Proposal for a Return Directive; Guideline 8 of the COE Guidelines on Forced Return.

⁹⁰ Article 14(2), (3) and (4) Commission Proposal for a Return Directive.

⁹¹ Article 5(2) of the ECHR provides that "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him".

⁹² Article 14(2) of the Commission Proposal for a Return Directive.

4.2.4. Legislation regulating return and removal⁹³

a) The Albanian situation

- Article 4 and 5 of the Law on Foreigners represent an all-inclusive list of those categories of persons that are considered undesirable and of cases of persons who have been refused entry, visa, or residence permit, and who are thus required to leave the country⁹⁴.
- Albanian law does not clearly differentiate between a return decision (which provides a legal basis for ordering foreigners to leave the country) and removal (the process of forcibly returning foreigners to their country of origin or to another third country).
- The Articles covering removal are found in Chapter V of Law on Foreigners.
- The Albanian Legislation envisages forced removal, i.e. the execution of the return order, by relevant state organs when:
 1. Foreigners have not left or there are well-founded reasons to believe that they will not leave;
 2. They have entered or stay illegally in Albania;
 3. They are expelled by another state and readmitted by Albania based on readmission agreements.⁹⁵
- Asylum seekers and people whose lives are believed to be in danger cannot be removed.
- According to Albanian Legislation, the removal of irregular migrants is done by a removal order issued by MOI authorities.
- The removal order is issued in one of the following cases:
 - In case of visa refusal;
 - In case the visa has expired;
 - In case the residence permit is refused or expired;⁹⁶
 - In case of final court decision (which can also occur in one of the cases above).
- The grounds for removal listed in Articles 46 and 47 of the Law on Foreigners fail to make reference to the Articles 4 and 5 of the same Law. Moreover, they are unclear: in particular, the forced removal (in Article 47) applies to almost all the categories of the irregular migrants, and, thus, does not allow foreigners to leave the country voluntarily.
- Article 52, paragraph 1 of the Law on Foreigners lists all those categories that are subject

⁹³ This section does not include foreigners that stay at the transit points at the CBP for a period of up 48 hours.

⁹⁴ The Article 4 clarifies which are the "Undesirable persons": "1. they act or make propaganda against the sovereignty, national security, constitutional order and public security; 2. they have been sentenced for crimes for which the law foresees a punishment of not less than 5 years in prison; 3. they are members of terrorist organisations or organisations who violate the constitutional order, as well as when they support actions that are against any organised form of government; 4. they are wanted by international organisations for crimes against humanity, crimes committed in times of war, or other serious crimes; 5. They constitute a threat or infringe the relations of the Republic of Albania with other countries; 6. there are founded suspects that they will enter or stay in the territory of the Republic of Albania to commit a crime, or when they constitute a threat for the State; 7. they are engaged in organised crime, prostitution, traffic of narcotics, illegal traffic of clandestine in the Republic of Albania or their transiting, or in any other illegal traffic. The prohibition, for the aforementioned persons, to enter in the Republic of Albania is valid for a period not less than 10 years from the date they are declared "undesirable persons". The Article 5 includes in the list, *inter alia*, those that: are users of narcotics or chronic users of alcohol, or persons who have very infectious diseases; make propaganda for prostitution or other acts against the public moral and are punishable by law; have violated or violate provisions of the Albanian legislation; work without a work permission or accept to employ foreigners without a work permission; have been expelled and try to enter or stay in the Republic of Albania during the time that the decision of the expulsion is valid; do not have a passport or other document, according to the Article 9 of this law, in order to clarify their identity and citizenship, or they have presented fraudulent documents. For those cases, exception can be made only on humanitarian grounds.

⁹⁵ See Article 47 of Law on Foreigners.

⁹⁶ See Articles 46 and 50 of Law on Foreigners. The removal for special categories is done only by Order of MOI.

to an immediate execution of a removal order,⁹⁷ but the grounds for immediate execution of the removal order remain unclear. While the objective of the Article is to provide a stricter (pejorative) regime for potentially dangerous irregular migrants (those who pose a threat to public security, are involved in the organized crime, etc.), it ends up including almost all categories of irregular migrants and, therefore, exceeds its scope. In this way, Article 52 also overlaps with Article 51, depriving it of any legal value.⁹⁸

- The Albanian Legislation provides that the execution of the removal order is done by the Police Authorities.⁹⁹ The execution is carried out only once all the documents and the appeal procedures have been finalised. The execution of the order cannot be postponed for more than 45 days unless there is a court decision.¹⁰⁰
- The current legal framework does not provide timeframes for postponing the execution of the removal order by court decision and thus leaves the courts to decide on ad hoc basis. The law also fails to indicate where the foreigner should stay while the appeal procedures take place or until all the documentation is ready.
- The current legislation does not envisage any special regime for the protection of minors subject to removal.

b) The EU *acquis* and international principles

The Hague Programme adopted by the European Council in November 2004 expressly asked for the establishment of common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.

Aliens who do not fulfil or who no longer fulfil the short-stay conditions applicable within the territory of a country that has signed a readmission agreement (Contracting Party) shall normally be required to leave the territories of the Contracting Parties immediately though a return decision.¹⁰¹ However, priority should be given to voluntary return that should be actively promoted by the authorities.¹⁰² The principle of voluntary return should be promoted by establishing a general rule that a "period for departure" should normally be granted (40 days foreseen within the European Union).¹⁰³ Whenever feasible, voluntary return is the most desirable form of return because it takes account the person's decision, allows the returnee to prepare for the return and avoids the stigma of deportation and its negative repercussions on successful reintegration and diminishes the likelihood of repeated irregular migration.¹⁰⁴ Moreover, consideration should be given to the overall cost of such assisted returns, especially when compared with the cost of extended stays, which ultimately end in deportation.

The same proposal established, as a general principle, a harmonised two-step procedure, where the return decision is the first step and – if necessary – the issuing of a removal order is a second step.

⁹⁷ Article 52(1) provides that immediate execution of removal is done when the foreigner: is sentenced by a final decision for a criminal contravention; his permit is refused based on Articles 4-5; he did not leave the country within the deadline; he does not have adequate funds for living; does not have a passport or other means of identification; declared that he will not leave regardless of the decision of the competent organs; has presented false data or documents; there are well founded reasons that he will leave for an unidentified direction; grounds for appeal are based on abusive grounds.

⁹⁸ Article 52 per se is contradictory, as it envisages immediate execution of the removal order, while it foresees possibilities for appeal against the immediate execution, which is contrary to the nature of the 'immediate execution procedure'.

⁹⁹ Article 55 of Law on Foreigners.

¹⁰⁰ Article 51 of Law on Foreigners.

¹⁰¹ The Convention Implementing the Schengen Agreement.

¹⁰² Guideline 1 of the COE Guidelines on Forced Return.

¹⁰³ Commission Proposal for a Return Directive.

¹⁰⁴ See Assistant Voluntary Return and Reintegration Programs at http://www.iom.int/en/who/main_service_areas_assisted.shtml.

The Council Directive *On the mutual recognition of decisions on the expulsion of third country nationals*¹⁰⁵ envisages that that expulsion shall apply to the case of a third-country national who is the subject of a return decision based, *inter alia*, on a serious and present threat to public order or to national security and safety and to third-country national who is subject of an expulsion decision based on failure to comply with national rules on the entry and residence of aliens (or who do not fulfil or no longer fulfil the conditions of entry as set out in Article 5 of the Schengen Agreement).¹⁰⁶

A Return decision might be issued separately or together with the removal order. In cases where irregular migrants are in the process of renewing their residence permit or other aspects of their status, the return decision shall be taken only when the pending procedure has been concluded.

Removal orders shall only be issued in pursuance of a return decision reached in accordance with the law.

As such, it must be certain that enforcing the return decision will not expose the person concerned to: a real risk of being executed or exposed to torture or inhuman or degrading treatment or punishment; a real risk of being killed or subjected to inhuman or degrading treatment by non-state actors if the authorities of the state for return, parties or organizations including international organizations are unable or unwilling to provide effective protection; other situations which would, under international law or national legislation, justify international protection. Furthermore, the removal order shall only be issued after the authorities are satisfied that the possible interference with the returnee's right to respect for family and/or private life is, in particular, proportionate in pursuance of a legitimate aim. The solidity of the third country national's family relationships and the existence of family, cultural and social ties with his country of origin should always be taken in due account.¹⁰⁷ Removal procedures shall respect migrants' fundamental rights and dignity.

In deciding to issue a removal order to a separated child, assistance should be granted with due consideration given to the best interest of the child. When minors are not allowed to prolong their stay in the country, they may only be returned to their country of origin or a third country prepared to accept them, if on arrival adequate reception and care are available (based on their needs, age and degree of independence). Care can be provided by parents or other adults responsible for the child, or by governmental or non-governmental bodies.¹⁰⁸ If return under these conditions is not possible, countries should in principle allow minors to remain in their territory. In all cases, a minor may not be returned to a third country if such return contravenes the UN Convention Relating to the Status of Refugees, the European Convention on Human Rights and Fundamental Freedoms, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, or the UN Convention on the Rights of the Child and the protocols to these conventions.¹⁰⁹

c) Other current practices

In **Belgium**, the alien may be removed, *inter alia*, if:

- a) He/she remains in the country without the appropriate documents.
- b) He/she remains in the country after their visa has expired.
- c) His/Her conduct and/ or presence endangers public order or national security.
- d) The Minister for Home Affairs considers his/her presence or activities harmful for the

¹⁰⁵ Council Directive 2001/40/EC of 28 May 2001.

¹⁰⁶ See Article 3(1) of Directive 2001/40/EC.

¹⁰⁷ Article 5 of the Commission Proposal for a Return Directive.

¹⁰⁸ Guideline 2 of the COE Guidelines.

¹⁰⁹ Article 5 of the Council Resolution of 26 June 1997 *On unaccompanied minors who are nationals of third countries* (97/C 221/03) Official Journal C 221, 19/07/1997 p. 0023 – 0027.

international relations of Belgium or any other Schengen state.

- e) He/she is listed in the SIS database as people to be removed from the Schengen area.
- f) He/she is not able to sustain themselves.

Return decisions are usually issued at the same time as removal order. This type of decision notifies the alien that he/she has to leave the country within a defined delay, as well as the legal and factual reasons for the decision. The notification form clearly states that he/she is not allowed to go to another Schengen state. There are also cases in which the individual is not given the opportunity to prepare and effectuate his/her own removal. In this case the alien is physically removed immediately.

In **Hungary**, the expulsion for aliens policing purposes or prohibition of entry and stay is ordered against a foreigner who fits the description provided by the Law (Article 32.2 of the Law on the Entry and Stay of Foreign Nationals). In particular, expulsion or restriction of entry and stay may be imposed against foreign nationals:

- a) Who have violated or have attempted to violate the rules of entering and exiting the country;
- b) Who have violated the regulations on staying in the country;
- c) Who have engaged in employment or in other gainful activities in Hungary without the prescribed official permit;
- d) Who have disclosed false information or untrue facts to the authority in the interest of obtaining the right to entry or stay in the country;
- e) Who have failed to repay any refundable financial aid received from the State of Hungary;
- f) Whose entry and stay may injure or jeopardize national security, public security, the national economy, public health and/or the human environment;
- g) Who have applied for entry or residence permit on the grounds of reunification with their spouse, yet did not establish a family with said spouse, or have allegedly provided some form of payment for contracting marriage (marriage of convenience);
- h) Who was returned under treaty without expulsion to the authorities of another state.

The alien control may refrain from ordering the expulsion of a foreign national or the restriction of entry and stay, if the person in question agrees to leave the country voluntarily.

d) Recommendations

- When issuing a return decision, the two-step approach should be taken into consideration, whereby the return decision is the first step and (if necessary) the removal order is the second step.
- Irregular migrants must be granted a period to return themselves or participate in an AVR programme.
- Forced removal should be exceptional and should not be used in all cases of irregular migrants.
- Grounds and procedures for return and removal should be transparent and clearly laid down in the law.
- No return shall be issued where the state is subject to obligations derived from fundamental rights such as the right to non-refoulement, the right to education and the right to family unity. Where a return decision has already been issued, it shall be withdrawn.¹¹⁰
- The collective expulsion of aliens is prohibited and should be stated as such in the law.
- The provisions of the Albanian Law on Foreigners that deal with return decision and removal orders should be redrafted. In particular, Articles 4 and 5 and Articles 46 and 47 should be

¹¹⁰ Article 6 of the Commission Proposal for a Return Directive.

redrafted in order to avoid contradictions and overlapping. When relevant, reference should be made from one Article to another in order to have logical flow of the provisions.

- The laws that regulate the execution of removal orders should be amended to clearly stipulate the maximum time allowed for postponing the execution of removal orders, to clearly state where foreigners should stay in the event that their removal has been postponed, and to avoid contradictions between Articles 51 and 52 of the Law on Foreigners.
- Article 52 of the Law on Foreigners should be redrafted to be in line with its objective, which is to provide specific regimes to specific categories of irregular migrants. The Article should provide realistic timeframes for lodging a complaint. Moreover, the new version of Article 52 should clearly emphasise the timeframes and structures involved in the procedures, for the sake of clarity and transparency.¹¹¹
- It is recommended that the Albanian authorities should implement specific mechanisms to improve the acquisition of the necessary documentation from the consular authorities of the state to which foreign nationals or stateless persons are to be expelled (this is particularly relevant outside the context of Readmission Agreements).¹¹²
- When removing foreigners, the use of coercive measures should be expressly bound to the principle of proportionality. Furthermore, minimum safeguards for the conduct of forced return should be established.¹¹³
- The best interest of the child as envisaged also by the Convention for the Right of the Child should be taken into consideration.¹¹⁴
- Unaccompanied minors to be returned or removed should be availed a specific regime.¹¹⁵ Before removing minors, the authorities should be satisfied that they will be returned to either a relative, a nominated guardian, or to adequate reception facilities in the state of return. If return under these conditions is not possible, state authorities should in principle allow minors to remain in their territory.¹¹⁶

4.2.5. Content and format of the return decision/removal order

a) The Albanian situation

- The current legislation does not deal with all the aspects of removal/expulsion comprehensively. In particular,¹¹⁷ it does not clearly indicate the grounds for the removal. This creates possibility for a wide margin of discretion for the responsible authorities that could give way to abusive decisions. Furthermore, Albanian legislation does not indicate whether foreigners have any right to appeal nor the authority to which the appeal should

¹¹¹ Guideline 5 of the COE Guidelines on Forced Return lay down that the period for the remedy shall not be unreasonably short.

¹¹² Council Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures.

¹¹³ Taking into account the provisions of Council Directive 2004/573/EC of 29 April 2004 *On the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subject of individual removal orders*.

¹¹⁴ See Article 3 of the CRC. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. See also Articles 10 and 11 of the CRC. This is also in line with the Article 5 of the EC Directive on Common Standards and Procedures for the return of the third country nationals.

¹¹⁵ The removal of the minors is not foreseen in some legislation.

¹¹⁶ Article 5 of the Council Resolution of 26 June 1997 *On unaccompanied minors who are nationals of third countries* (97/C 221/03) Official Journal C 221, 19/07/1997 p. 0023 – 0027.

¹¹⁷ Article 54 of Law on Foreigners.

be lodged. There is no indication of the language in which the removal order should be drafted and whether there is any possibility for translation services.

b) The EU *acquis* and international principles

The COE Guidelines on Forced Return state that removal orders and return decisions should be issued in writing and in a language the migrant understands. They shall also indicate the legal and factual grounds on which orders are based, the remedies and consequences for non-compliance, as well as the responsible bodies from whom more info can be requested. Upon request, the migrant shall be provided translation (oral or written) of the main elements of return decision in a language that the third country national may be reasonably supposed to understand.¹¹⁸ The removal order should specify the delay within which the removal will be enforced and the country of return.¹¹⁹

c) Other current practices

Practices in EU countries were not examined for this issue.

d) Recommendations

- Albanian legal provisions regarding return/removal orders should be redrafted and specify that the orders must include information on the right for appeal;¹²⁰ the authority to which to lodge the appeal and the grounds for return and removal. and the timeframes for lodging the appeal.
- The new legislation should provide that the return/removal orders are written in a language understood by the foreigner (or at least that translation is available upon request).
- When envisaging the content of the removal order, the legal provision should take into consideration the EU standards on the format of the removal orders.

4.2.6. Judicial remedies against return, removal and detention

a) The Albanian situation

- Albanian Law provides for the right to lodge administrative and judicial complaints against removal orders in the Articles 48¹²¹ and 56¹²² of Law on Foreigners. The appeal against a removal order has suspensive effect, which is also in line with the international standards. The right to appeal is not envisaged for detention.
- Nonetheless, this legal framework is incomplete and contradictory. The relevant Articles do not include any timeframes regarding the appeal in the administrative organs or any indication regarding the time required by the administrative organ to process the appeal. It is not clear what procedures should be followed by foreigners, mainly because no such information is required to be included in the order.
- Article 56 of the Law on Foreigners is also contradictory, since it only grants the right of appeal to foreigners who have stayed legally in Albania at least one year and makes no reference to Article 48 of the same Law. Further confusion is created by the fact that the Article 56 grants the right of appeal to special categories of foreigners who receive removal orders from the

¹¹⁸ Article 11 of the Commission Proposal for a Return Directive.

¹¹⁹ Article 7 of the Commission Proposal for a Return Directive.

¹²⁰ Whether this is allowed for removal as such, for detention pending removal or for both.

¹²¹ Article 48 provides in general that there is a right of appeal against the expulsion or removal order.

¹²² Article 56 provides that the appeal can be done in a higher administrative organ or in the court. The appeal in the court can be done only by the irregular migrants that have stayed legally in Albania for not less than one year.

MOI.¹²³ It also refers to consultations with the Consultative Committee, a structure that has never been created since the adoption of the Law on Foreigners.

- Moreover, the Albanian legislation does not provide whether any translating services could be offered to the foreigner during the appeal procedures,¹²⁴ nor does it indicate which is the administrative organ responsible for dealing with "administrative complaints" referred to in the law.

b) The EU *acquis* and international principles

Article 4 of the Council Directive *On the mutual recognition of decisions on the expulsion of third country nationals*¹²⁵ foresees that Member States must ensure that third-country nationals granted a return decision have the right to an effective judicial remedy before a court or tribunal, to appeal against or to seek the review of a return decision or removal. The remedy should have suspensive effects¹²⁶ or entail the right to seek suspension of the enforcement of the return decision.¹²⁷ The COE Twenty Guidelines on Forced Return provide the obligation to offer to everyone effective remedy against the removal order before competent authority and they refer (Article 5) to "a competent authority or body composed of impartial members".

The Article 5 of the ECHR states that "everyone who is deprived of his/her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and his/her release ordered if the detention is not lawful". The time limit for exercising the remedy shall not be unreasonably short. The foreign national concerned should have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance. Legal aid free of charge should be made available to those who lack sufficient resources.¹²⁸ In particular, in the COE Twenty Guidelines on Forced Return it is also clarified that a person arrested and/or detained for the purposes of ensuring his/her removal from the national territory shall be entitled to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and, subject to any appeal, he/she shall be released immediately if the detention is not lawful. This remedy shall be readily accessible and effective and legal aid should be provided for in accordance with national legislation.¹²⁹

Compensation should be provided to any person who has been unlawfully detained or in case of a breach of Article 5 of the ECHR or Article 9 of the ICCPR.

c) Other current practices

In the **Netherlands**, an alien who has been deprived of his liberty has the right of appeal before a Court, which will judge if the deprivation of liberty is lawful. After 6 months the Court will assess the continuation of the detention with explicit scrutiny.

In **Belgium**, foreigners detained in a closed centre can lodge an appeal against the detention order. The Court has to decide within 5 days about the lawfulness of the appeal. If no decision

¹²³ According to Article 50 of the Law on Foreigners, special categories of irregular migrants can be removed only by Order of MOI.

¹²⁴ The appeal in the judicial system is regulated by the Civil Procedural Code, while the problem remains for complaints lodged in the administrative organs.

¹²⁵ Council Directive 2001/40/EC of 28 May 2001.

¹²⁶ In particular when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights (see Guideline 5 of the COE Guidelines on Forced Return).

¹²⁷ Article 12(1) and (2) of the Commission Proposal for a Return Directive; Guideline 5 of the COE Guidelines on Forced Return.

¹²⁸ Article 12(3) of the Commission Proposal for a Return Directive.

¹²⁹ Guideline 9 of the COE Guidelines on Forced Return.

is taken within those 5 days the detained migrant has to be released. If the court decides to release the detained migrant and there is no appeal against that decision by the District Prosecutor, the detained migrant is immediately released. This procedure does not affect the removal and in practice the detained migrant can actually be physically removed before the Court renders its decision. If the District Court decides to release the detained migrant and the Prosecutor appeals against that decision, the individual will remain in custody. At this stage, the detained migrant cannot be removed before this (higher) appeal is dealt with by the Court of Appeals, which has to decide within 15 days, otherwise the detained migrant has to be released. The detained migrant can appeal to the District Court every 30 days.

d) Recommendations

- Albanian law should be amended in order to clearly state the right and the procedures to be followed for the appeal by irregular migrants.¹³⁰ In particular, Article 56 of the Law on Foreigners should be redrafted and should refer to Article 48.
- The obligation of one-year legal residence, which at the present is a condition for the appeal in judicial system, should be revised in order to better reflect the EU standards.
- The law should provide clearly the timeframes for lodging and processing the complaint to the administrative organs.¹³¹
- The legislation should provide that the foreigner must have the opportunity to understand the appeal process and to lodge the complaint in a language he/she understands, as well as the possibility to be supported with legal assistance.
- The administrative organs responsible for reviewing the complaint should be also clarified.¹³²

4.2.7. Re-entry Ban

a) The Albanian situation

- The possibility for a re-entry ban is foreseen by the Albanian Legislation in the Article 54 of Law on Foreigners as one of the elements of the removal order.
- However, the current law does not stipulate the maximum and minimum length of the ban, nor does it clarify whether the ban affects all categories of migrants or only some. Likewise, it fails to mention under which circumstances a more favourable regime can be applied.

b) The EU *acquis* and international principles

A re-entry ban is a common element in the fight against irregular migration and is foreseen in the legislation of many countries. The length of the re-entry ban should be determined with due consideration of all relevant circumstances of the individual case. The re-entry ban should not exceed a period of five years. In the case of an irregular migrant who is subject to a removal order for the first time or who has reported back to the consular post of the member state and who has reimbursed all the costs of his/her previous return procedure, the re-entry ban may be withdrawn. The re-entry ban may be suspended on an exceptional and temporary basis in appropriate individual cases.¹³³

¹³⁰ The law might exempt from this right persons who pose a danger for the public health and security.

¹³¹ Article 56 mentions timeframes such as 8 days after the decision of the administrative organ has been issued, the foreigner lodge the complaint in the court. The provision does not specify whether 8 days is working days or calendar days.

¹³² The current basis provides both for the administrative and judicial organ, but it is not clear which is the administrative organ.

¹³³ Article 9 of the Commission Proposal for a Return Directive.

c) Other current practices

In **Romania**, foreigners who have been removed from the country are issued an exclusion order that prevent them from re-entering the country. In case of legal entrance, the re-entry ban goes from a minimum of 1 year, in case the migrant did not comply with the order to leave the country to a maximum of 5 years, in case of prolonged illegal stay (4/5 years). In certain cases of illegal entrance, the duration of the interdiction can be of 10 years.

In **Belgium**, a re-entry ban can be enforced against aliens, who are not resident in the state, in case they are attaint to the public order or to the national security or in case they did not respect the condition related to lawful residence. The re-entry ban should be exclusively grounded on the foreigner's behaviour and it cannot be based on the right that he has exercised, according to the law, of free opinion, association or assembly (Article 20 of the Law on Foreigners). The Article 21 of the same Law establishes which are the exceptions at the above provision (i.e. the re-entry ban cannot be applied to the migrant who has been recognized the refugee status, to the foreigner who has been leaving in Belgium since he was 12 years, etc.). The re-entry ban can be for a maximum period of ten years, within which it can be suspended.

d) Recommendations

- The current Albanian law should clearly lay down in a specific Article the possibility for imposing a re-entry ban in addition to removal. This Article should specify the maximum and minimum periods of validity of the ban, with the maximum period being five years.
- Also the possibility for withdrawing the re-entry ban for special categories should be envisaged.¹³⁴

4.2.8. Rights and treatment of irregular migrants detained in closed centres¹³⁵

a) The Albanian situation

- The Decision of Council of Ministers No. 46/2000 approving the Regulation for functioning of the Centre for foreigners not asylum seekers constitutes the legal basis for the treatment/ rights of irregular migrants to be detained in any future centre.
- However, the Regulation does not currently envisage all the needed issues (i.e. rights and duties of residents, procedure and timeframe for lodging an appeal, etc.).
- Article 5, paragraph 2, of the Regulation, which states that foreigners who fall under Articles 4 and 5 of the Law on Foreigners cannot be treated in the centre, is unclear and appears to contradict the very purpose of the centre. Since the main objective of the centre is to accommodate irregular migrants pending their removal, there is no reason why those categories of foreigners listed in Articles 4 and 5 cannot be accommodated in the centre unless they pose a danger to public health.

b) The EU *acquis* and international principles

Refer to the Human-material component below, in the section "List of material and human needs of the residents of the closed reception centre".

¹³⁴ Article 9 Commission Proposal for a Return Directive.

¹³⁵ For a more in depth analysis of this issue please refer to the Human-Material Component.

c) Other current practices

Refer to the Human-Material Component below, in the section "List of material and human needs of the residents of the closed reception centre".

d) Recommendations

- Albanian law should be amended to provide for adequate treatment of the residents in the closed centres.¹³⁶
- The Human Rights Standards/Instruments ratified by Albania should be duly taken in consideration.
- Internal contradictions, such as those contained in the Article 5.2 of the Regulation, when compared to Articles 4 and 5 of the Law on Foreigners, should be remedied.
- The rights and obligations of the detained migrants during their stay in the centre should be communicated to the detained migrants in a language they understand.
- The Framework Regulation and the Internal Regulation of each centre should specify the foreigners' right to lodge complaints about the treatment in the centre. The legal basis should also include the responsible authorities to whom to address the complaint and the timeframes for lodging a complaint.

4.2.9. Alternatives to detention¹³⁷

a) The Albanian situation

The Albanian Legislation does not include other alternatives to "forceful accompaniment" for irregular migrants. In case of a large influx of irregular migrants, their detention (as envisaged in the DCM 439/2000 and Law on Border Control)¹³⁸ will be costly for the country and also will not take into consideration the specific needs or circumstances of each category of migrant.

b) The EU *acquis* and international principles

Refer to the Institutional Component above, in the section "Alternatives to detention".

c) Other current practices

Refer to the Institutional Component above, in the section "Alternatives to detention".

d) Recommendations

- Detention should be considered a last resort and alternatives should be sought.
- The law should allow the authorities to grant certain categories of irregular migrants certain alternatives to detention, such as: financial guarantees, regular reporting to the police authorities, withdrawal of documents by authorities and obligation to stay at a designated place.¹³⁹
- Specific measures for the detention of children, families and vulnerable groups should be

¹³⁶ The amendment should be done in the view of drafting a framework regulation attached to the DCM that will provide the technical aspects of the centres.

¹³⁷ Refer also to the Institutional Component above.

¹³⁸ Article 23 of DCM 439/2000-Foreigners that come illegally from other countries are stopped by the state police (in accordance with the legal provisions) in the centres for the foreigners where they stay until their problem is sorted out.

¹³⁹ See Article 14 of the Proposal for the Directive and Guideline 6 of the COE Guidelines on Forced Return.

envisaged.¹⁴⁰

- Unaccompanied minors should not be detained, unless this is the last resort. In these cases they should be accommodated in facilities or institutions provided with personnel who could take into account the needs of persons of their age.¹⁴¹ They should be kept separated from the adults, unless it is in the interest of the child.

4.2.10. Post-detention Measures

a) The Albanian situation

Albanian law does not provide for any post-detention measures.

b) The EU *acquis* and international principles

Refer to the Institutional Component above, in the section "Post-Detention Measures".

c) Other current practices

Refer to the Institutional Component above, in the section "Post-Detention Measures".

d) Recommendations

- Post detention measures should be implemented when, at the end of the prolonged detention, it is impossible to return the irregular migrant.¹⁴² In such cases, alternatives to detention, such as "order to stay in a designated place", "regular reporting to the police"¹⁴³ or a "tolerated regime"¹⁴⁴ must be envisaged in the legislation.
- Tolerated status should not be envisaged as a possibility for a long-term regularisation as it creates the possibility for abuse. Even within a tolerated regime, the removal order should be still considered as effective and should be executed when the obstacles for execution no longer exist.

CONCLUSIONS

Albanian legal framework requires extensive amendments and additions. The provisions regulating return and reception of irregular migrants, contained in the Law on Foreigners and other legal texts are insufficient and as a consequence require redrafting.

The recommendation to redraft the Law on Foreigners is also in line with previous assessments undertaken, such as the Gap Analysis, and recommendations contained in the National Strategy on Migration and the Action Plan on Migration. This paper has been limited in assessing the current situation, highlighting the gaps and giving recommendations based on best practices and the major international instruments.

¹⁴⁰ See also the Human Component. See also Article 15 of the COM(2005)391 final and the Guideline 11 of the COE Guidelines on the Forced Return.

¹⁴¹ See also the Human Material Component.

¹⁴² See ARGO Manual on Forced Return.

¹⁴³ Ibid. This is the situation in Hungary, Slovenia, etc.

¹⁴⁴ See the Institutional Component above, section "Post-detention Measures".

The current deficiencies of the Albanian legal framework should be addressed before the third country clause of the EC/Albania Readmission Agreement comes into force in 2008. It is suggest that in order for the third country clause to be adequately implemented, Albania should not find itself in a situation of a legal vacuum or possessing contradictory legislation as this could hamper the successful implementation of the EC/Albania RA.

In this situation, the establishment of a Working Group on legal reform is recommended.

4.3. THE HUMAN-MATERIAL COMPONENT

Introduction

The main aim of the component was to address the human and material needs of migrants who will be detained in the closed centre. Other aspects related to the running of the centre (i.e. staff issues, material and financial aspects) were also analysed. The authorities that will be charge with running the centre should "ensure that third-country nationals under temporary custody are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law".¹⁴⁵ At the EU level, the obligation to respect human rights and fundamental freedoms of migrants has been often and clearly underlined.¹⁴⁶ This component also contains practical recommendations for the institution that will run the centre.

This section is mainly based on the EU *acquis*, international Public Law and international guidelines establishing minimum standards for detention of irregular migrants and the practice of other EU member states. The Albanian legislation in the field is very scarce, as no centre has been so far established, and the only Regulation available, based on the DCM no 46/2002, is fragmented and not comprehensive.

The structure of this component differs slightly from the previous one. Since the suggestions elaborated are mainly based on the EU *acquis* and international principles in the field, these two sections have been merged in a single set of recommendations. The section on the Albanian current situation is mainly based on the provisions of the only legal act that deals with the issue of detention of irregular migrants and, when relevant, on the experiences of the two NRCs already existing.¹⁴⁷

Assessment of the main gaps and general Recommendations

4.3.1. List of material and human needs of the residents of the closed reception centre

4.3.1.1. Bedding and Food

a) The Albanian situation

- The Regulation does not foresee anything on bedding.
- Regarding food the regulation states that "nutritional assistance" is provided equally for each foreigner in accordance with national standards, but this is not adequately specified. A meal should be distributed three times a day, at pre-determined times. Article 10 states that special treatment is envisioned for individuals with medical conditions.
- In the two NRCs already existing, dietary needs, linked to religious and medical reasons, are fully respected, three warm meals per day are prepared and children's needs are taken in high consideration.

¹⁴⁵ Article 15 of the Commission Proposal for a Return Directive.

¹⁴⁶ EC Green Paper on a Community return policy on illegal residents COM (2002) 175 final, item 2.4.

¹⁴⁷ It is also relevant to mention that the recommendations came out from this component represented the main source factored during the Design Phase of the Centre, that will be better explained under the Geographical Component below.

b) Other current practices

In **Belgium**, food is provided by a private catering company, which delivers three meals a day; all dietary necessities are fully respected.

In **Hungary**, the food requirements for religious or other reasons are made clear through a system of coloured cards by which the individuals' needs are more easily identified.

In **the Netherlands**¹⁴⁸ three meals a day are served, one of which is warm. The residents are allowed to purchase extra food in the institution, while they are not allowed to get food from their family.

c) The EU *acquis* and international principles¹⁴⁹ - Recommendations

- Every individual should be provided with a separate bed and appropriate bedding which shall be kept in good order and changed often enough to ensure cleanliness.
- Food supply should be of nutritional value, adequate for health and strength. It should take into account the age and health status of residents. The dietary needs, i.e. on the basis of religious belief or cultural requirements, should be also respected.
- Three meals (of which one/two should be warm) should be provided by the centre. Given the Albanian context, it does not seem appropriate to outsource this basic service (as there are limited private companies which could provide a high-quality standard and reliable service).¹⁵⁰
- The institution running the centre should decide whether residents could be allowed to accept additional food from outside (e.g. from family and friends) or not, and clarify this issue in the internal regulation.
- Drinking water should be always available for everybody. Dining facilities should be accessible, in addition to regular meal hours, during mid-morning and mid-afternoon for snacks and drinks.
- Residents should be given some pocket money (in case of Albania it is suggested a compensation for small activities undertaken in the centre, i.e. cleaning, etc.). Residents could use this money for different reasons (i.e. purchase extra-food and drinks, telephone cards, etc.).

4.3.1.2. Clothing / Personal Hygiene

a) The Albanian situation

- The regulation does not foresee anything regarding clothing and personal hygiene.
- The experiences of the two NRCs show that the issue of hygiene is of particular importance and as such it requires specific attention.
- In the two NRCs, residents and staff are both in charge of the maintenance of the overall hygiene of the centre. Individuals are provided with clothing when it is needed.

b) Other current practices

Personal hygiene is taken in high consideration in all the cases observed. All institutions provide residents with a number of goods (a comb, a bar of soap, toothpaste, shampoo, towels, bed sheets,

¹⁴⁸ Information contained in the House Rules of the Centre J.C. Koning Willem II. This centre accommodates aliens that are remanded in custody by virtue of the *Vreemdelingenwet* [Aliens Law] to await expulsion; there is also a department where persons are imprisoned on the basis of criminal prosecution.

¹⁴⁹ Article 25 of the UDHR; Article 11 of the CESCR; 11 CPT/Inf (97) 10.B.29; paragraph 20 of the UN Standards Minimum Rules.

¹⁵⁰ The experience of the NRC centre for Asylum Seekers suggests that the outsourcing of basic services (i.e. food, clothing, etc.) to private companies or other organizations is not appropriate as they might not be able or willing to provide the service on a daily basis (risk of intermittent provision) and moreover their standards might not be good enough.

pillow cases, underpants, etc.) in the intake phase. Bed linen and underclothing are periodically changed and washed, and clothes are provided to the residents when needed.

In **Belgium**, a private company takes care of most of the above items (in particular bed linen, towels, etc.) and the same happens in **the Netherlands**.

c) The EU *acquis* and international principles¹⁵¹ - Recommendations

- For individuals who cannot wear their own clothing, the provision of an outfit of clothing suitable for the climate and adequate to keep them in good health should be guaranteed. All clothing should be clean and kept in proper conditions (in particular underclothing should be changed and washed regularly).
- Opportunity to have access to basic necessities, i.e. showers and other toilet facilities, should be always guaranteed; provisions of water and such toilet Articles as are necessary for health and cleanliness should always be available.
- Minimum free toiletries are essential items to be distributed regularly every week.
- The institution must be able to replace items provided on medical grounds.
- Since this issue is quite sensitive, it requires specific attention from the responsible institution, especially in case of children, elderly and sick persons.

4.3.1.3. Registration

a) The Albanian situation

The Regulation only refers to medical check up of the individuals upon arrival (Article 12, b) and it does not refer to other activities to undertake in phase of registration.

b) Other current practices

In all the cases observed, the phase of registration upon arrival is considered very important, because it is from this phase that the institution takes over the responsibility for the residents' conditions.

In **Belgium**, for example, migrants upon arrival are received by the different teams, to fulfil the whole series of formalities: identification (including photographing and fingerprinting), medical check-up, defining diet (medical as well as religious), inventory of possessions, body-search, impounding of forbidden objects, etc. Each new entrant may use the telephone for free for at least 10 minutes.

The registration/intake is also considered a crucial phase in **the Netherlands**. In particular, in this phase a number of relevant functions are undertaken: the registration itself (through the use of pictures and fingerprints); the body check, the inventory of residents' goods (the goods which are not allowed to be brought in the rooms are sealed and stored in a specific storage room, located at the entrance) and the impounding of forbidden objects. In phase of intake, the residents are also subject to medical check up (which is done within the first 24 hours).

¹⁵¹ Article 25 of the UDHR; Article 11 of the CESC; CPT/Inf (97) 10, B.29; paragraphs 15 and 16 of the UN Standards Minimum Rules.

c) EU *acquis* and international principles¹⁵² - Recommendations

- Upon foreigners' arrival at the centre, all formalities should be dealt with properly (i.e. identification, registration, medical check-up, defining diet, inventory of possession, impounding of forbidden objects, etc.).
- Residents should be received in a specific room, be informed of all the relevant issues, receive an appropriate and comprehensive information package regarding their stay in the centre, and be given a medical examination.
- All residents should be provided with a package containing toiletries (i.e. soap, toothbrush, toothpaste, razor blades, etc.).
- They should also be provided with the possibility to make a free phone call to inform persons of their choice about their situation and detention.
- They should have their baggage examined before they enter the main building. All dangerous or potentially hazardous material, such as electrical equipment, medicines or weapons, should be removed and stored. Minimum luggage required for the stay could be kept in the private rooms, but excess baggage should be stored in a safe and personally accessible storage area. All belongings should be returned to the individual upon his/her departure.
- A medical examination is necessary to determine whether the individual concerned is medically fit to be detained, and especially to detect contagious diseases, suicide risk and previous trauma. Where such cases can be identified, release should be strongly recommended by the doctor and then granted.¹⁵³

4.3.2.4. Communication with the outside world

a) The Albanian situation

The Regulation states that meetings are to be made in the presence of a supervisor,¹⁵⁴ but it is also stated that translators, lawyers, doctors, officials from the DfR, officials from UNHCR, members of diplomatic body and consulate are provided all the possibilities for "free" contacts with the foreigners in the centre;¹⁵⁵ it is not clear what "free" might mean here.¹⁵⁶

b) Other current practices

Communication with "the outside" is taken in high consideration in the internal regulation of all the cases observed, as one of the basic rights of people under any form of detention. To this propose visits with family members and friends are always ensured. Such visits should be distinguished from the visits of external support entities such as lawyers, consular office staff, NGOs/IGOs representatives, etc. Visiting hours and rules are clearly indicated in the internal regulation of the centres and are communicated to the residents from their arrival in the centre.

In the Netherlands, a number of persons and authorities (including lawyers, and consular officers), the so-called "privileged contacts", are authorised to visit the residents and, in principle,

¹⁵² Article 14 of the ICCPR; Article 6 of the CAT; Article 28 of the ICRMW (that Albania has not yet ratified); Guideline 6 (2) of the COE Guideline on Forced Return; CPT/Inf (97) 10.C.30; CPT/ inf. (92)3 para. 44; 12th General Report of Activities of the CPT (2002).

¹⁵³ See section on vulnerable categories below.

¹⁵⁴ Article 13, paragraph 2.

¹⁵⁵ Article 11.

¹⁵⁶ This issue is partially covered by the Regulation at Article 13 and mentioned in the Article 8, paragraph 11.

to communicate with them freely. Conversations with lawyers or other authorities take place in separate visiting rooms without supervision. Phone calls may be free of charge depending on the recipient of the phone calls (diplomats, consuls, NGOs, international organizations or family). The use of a mobile phone by the residents is not permitted. Pay phones are available in addition to normal landline phones.

In **Belgium**, residents have continuous access to private telephone booths for external communication, but they are not allowed to use mobile phones, which are impounded on arrival. They may buy telephone cards or acquire them in exchange for undertaking odd jobs. Telephone calls with lawyers are always free of charge. Incoming and outgoing post is completely free, private and confidential. No censure of any kind is foreseen.

c) The EU *acquis* and international principles¹⁵⁷ - Recommendations

- Residents should be guaranteed communication with diplomatic and consular officers, family members, lawyers, religious officials, representatives of humanitarian and international organizations (such as IOM and UNHCR)¹⁵⁸ and NGOs.¹⁵⁹ Meetings with lawyers, representatives of organizations and religious officials should take place in private.
- Residents should be able to communicate with the outside world through public phones. Phone calls to lawyers should be free, and one free phone card per week should be distributed to residents.
- Phone calls, correspondence and access to news, through newspapers, TV, etc. should be permitted.
- The internal regulation of the centre should detail these issues, i.e. how often visits might take place, how often it is possible to make phone calls, who is going to pay for phone calls, etc.

4.3.1.5. Medical Care

a) The Albanian situation

- The Article 12 of the Regulation foresees a medical check upon entry to the centre, 24-hour transportation for the individual to the closest state hospital and medical evacuation. Such medical care should be given by specialised state medical personnel and should not be neglected or prevented by any authority.
- At both the existing NRCs basic medical care is provided and the residents are accompanied to hospital should they require special assistance.

b) Other current practices

Basic medical care is provided in all cases observed, through the provision of the daily presence of nurses and doctors. Some specialized medical staff (i.e. psychologist, gynaecologist, etc.) visits the centres periodically and is called when further medical assistance is required. Assistance from local specialized hospitals is available in cases of emergency and/or special need.

¹⁵⁷ Article 15, paragraph 1 of the Commission Proposal for a Return Directive; 7th General Report (CPT/Inf (97)10), para. 31; principles 15, 16 and 19 of the UN Body Principles; paragraphs 37-39 of the UN Standard Minimum Rules.

¹⁵⁸ See also Article 8, paragraph 7 of the Regulation.

¹⁵⁹ Article 10, paragraph 5, and Article 11 of the COE Guidelines on Forced Return.

In the **Netherlands**, medical care is provided by the medical department. A number of doctors, several nurses, psychologists, a psychiatrist, a physiotherapist and a dentist are attached to the institution. Residents are examined by a nurse and a doctor shortly after their arrival.

In **Belgium**, all inmates are medically examined upon arrival and departure (every individual deportee gets an individual "fit to fly" prior to departure). While at the centre, all residents have access to the medical assistance during well publicised consulting hours and the access is permanent in case of urgency. An information brochure has detailed information on the availability of the medical staff.

c) The EU *acquis* and international principles¹⁶⁰. Recommendations

- Emergency medical care shall not be refused to migrants and members of their families by reasons of any irregularities with regard to stay or employment.¹⁶¹
- Residents should have 24-hour access to emergency medical services and regular access to general medical treatment. Basic medical assistance must be provided within the centre, where there should be adequate space and equipment. A proper medical examination shall be offered to the resident as promptly as possible after his/her admission to the centre.
- The infirmary should be accessible daily (minimum 5 hours per day) during which a doctor is available. Visiting hours should be clearly posted.
- A psychological assessment of the migrants' conditions is particularly relevant in phase of reception, when it is necessary to check whether individuals are fit to be detained. This initial medical examination is also necessary to prevent any psychologically frail or traumatized individuals from entering detention centres, where their lives might be at risk.¹⁶² The occurrence of suicides and self-mutilations¹⁶³ in detention centres underscores the importance of such precautions.
- Particular attention should be given to the psychological well being of residents; in monitoring suicidal risks or self-harm and persons that have experienced trauma or torture. For specific treatment, emergency care, psychological support, such assistance should be offered in specialised institutions or civil hospitals.
- Special accommodation for necessary pre-natal and post-natal care and serious diseases should be envisaged. There should also be the possibility for individuals in such conditions to be treated under a more liberal regime.
- Medical care shall be always free of charge.

4.3.1.6. Legal assistance

a) The Albanian situation

Article 15 of the Regulation confuses legal assistance and social assistance. The only provision regarding legal assistance refers to the possibility for lawyers to have "free" contact with the foreigners in the centre. Article 11 (paragraphs a, b, c) envisages the provision of counselling to all residents, conducted by skilled social workers.

¹⁶⁰ Article 25 of the UDHR; CPT/Inf (97) 10,C.31; paragraphs 22-26 of the UN Standard Minimum Rules; Article 12 of the CEDAW.

¹⁶¹ Article 28 of the ICRMW.

¹⁶² Jesuit Refugee Services, *Detention in Europe: Administrative Detention of Asylum Seekers and Irregular Migrants*, 2005.

¹⁶³ Hughes/Field (n. 2) 33-34; 45; Pourgourides, C.: "The Mental Health Implications of the Detention of Asylum-seekers", in: Hughes/Liebaut (n. 2) 199-209; Heinhold, H.: *Detention in Deutschland. Die rechtlichen Voraussetzungen und der Vollzug (Asyl-Praxis-Bibliothek)*, Karlsruhe 2004, 50-57; 136-138.

b) Other current practices

In **Belgium**, residents of the centre have access to legal aid. Social workers can get them a *pro bono* lawyer or barrister should they wish it. Several NGOs also give legal aid to the residents of the centre. Telephone calls to lawyers are always free and private.

In the **Netherlands**, residents have access to legal aid. In addition, a Re-emigration Office, which guides migrants in their process of return, is also present in the centre. This Office deals with issues such as the necessary travel documents, finance, luggage, relations with other entities, etc. and it acts as intermediary with official visitors, such as the Bureau for Legal Aid, the Immigration and Naturalisation Department, the Aliens Registration Departments, lawyers, etc.

c) The EU *acquis* and international principles¹⁶⁴- Recommendations

- Legal assistance is a crucial right for all individuals under any form of detention. Legal assistance should take place at different stages and during all the duration of detention. Legal assistance should be provided to the resident in the centre in order to: clarify the grounds for detention, the expulsion process, the right to request asylum and other form of protection, the judicial remedies available and the right to lodge complaints.
- Residents should be given the unrestricted assistance of a qualified, impartial legal counsel, of their choice when it is possible, or otherwise assigned by the competent authority.
- Interviews and the legal sessions should take place individually and at any time they are requested.¹⁶⁵
- International Organisations, such as IOM and UNHCR, and NGOs might also be permitted to provide legal assistance.

4.3.1.7. Information, Translation and Transportation

a) The Albanian situation

- The Regulation states that "in order to facilitate the communication with the foreigner in the centre, a translator is assigned to be available at any time".¹⁶⁶ Article 5, paragraphs 1 and 5 of the Regulation only partially mentions this provision, without clarifying what should be the content of the information and the stage in which the translation should be provided.
- In the two existing Albanian NRCs, a list of translators/interpreters is available, to be called when necessary. This service is often provided by international organisations.
- Article 12 of the Regulation foresees 24 hours transportation to hospital, when necessary. There is no mention of any other kind of transportation service.

b) Other current practices

In **Hungary**, 70 per cent of the staff members speak at least two foreign languages; a list of 24-hour translators is at the disposal of the centre. The same is true in **Belgium**.

¹⁶⁴ Article 14, paragraph 3; Article 5, paragraph 4 of the ECHR; principles 11 and 17 of the UN Body of Principles; paragraphs 93 of the UN Standards Minimum Rules.

¹⁶⁵ Principle 18 of the UN Body of Principles.

¹⁶⁶ Article 8, paragraph 3.

c) The EU *acquis* and international principles ¹⁶⁷- Recommendations

- Information provided to individuals in the centre should cover several issues: grounds of detention; length of detention; rights (i.e. the right to be assisted by a lawyer, of seeking for asylum and other forms of protection, of appeal, of access to services providing interpretation, psychological support, the right to communicate with the outside world and to compensation for unlawful detention); obligations; services available in the facility, complaints mechanisms, etc.
- All information should be provided in a language that is adequately understandable for the individual, and recourse should be made, if necessary, to the services of an interpreter. Visual information may also help (leaflets and brochures in different languages).
- All this information should be contained in an information package distributed upon arrival.
- In order to guarantee effective legal assistance, lawyers should be accompanied by interpreters, whenever needed.
- The assistance of impartial and, when possible, qualified translation should be provided at any time in which a person does not adequately understand or speak the language used by the authorities responsible for his/her detention. Whenever needed, assistance, free of charge, of an interpreter should be guaranteed during legal proceedings.¹⁶⁸
- Transportation, free of charge, should always be available for residents to and from the centre, especially for emergencies and when the removal process starts.

4.3.1.8. Religious service

a) The Albanian situation

- Article 8, paragraph 2, of the Regulation mentions that the freedom of religion and its practicing are respected within the limits foreseen by the Constitution of the Republic of Albania.¹⁶⁹

b) Other current practices

In the **Netherlands**, particular attention is paid to spiritual care. A minister, a pastor and an imam are attached to the institution. Residents are allowed to keep up personal contacts with the spiritual advisor of the religion or conviction of their choice, which is attached to the institution, and to attend religious meetings or services that are held in the institution. Spiritual visits are kept confidential. Group meetings on the Koran or the Bible are organised at set times and church services are held regularly.

In **Belgium**, all moral and religious convictions and denominations are allowed and respected in the centres. All inmates have access at all time to a minister of the religion of their choice or to a moral consultant. Religious festivities are respected and fully accessible.

¹⁶⁷ Articles 13, 14 and 18 of the UN Body of Principles; Articles 9 and 14 of the ICCPR; Article 5, paragraph 4, of the ECHR; Article 14, paragraph 3, of the ICCPR; Guidelines 6 (2) and 10 of the COE Guidelines on Forced Return; Article 35 of the UN Standards Minimum Rules.

¹⁶⁸ Principle 14 of the UN Body of Principles, Guideline 10 (7) of the COE Guidelines on Forced Return.

¹⁶⁹ The Article 24 of the Constitution of Albania states that: "1. Freedom of conscience and of religion is guaranteed. 2. Everyone is free to choose or to change his religion or beliefs, as well as to express them individually or collectively, in public or private life, through cult, education, practices or the performance of rituals. 3. No one may be compelled or prohibited to take part or not in a religious community or in religious practices or to make his beliefs or faith public".

c) The EU *acquis* and international principles¹⁷⁰ - Recommendations

- Religious services should be as regular as possible, confidential private visits with religious officials should be possible upon request.
- A minister, a pastor and an imam should be associated to the institution, depending on the size of the centre and detainees' need for religious guidance.
- Freedom of religion implies the right to wear specific clothing, and to follow a religious diet.

4.3.1.9. Sports, Recreation and Leisure Activities

a) The Albanian situation

Article 8, paragraph 13, of the Regulation foresees that, based on the plans of the centre, foreigners have the right to a maximum of four hours a days of outdoor leisure activities.

b) Other current practices

In the **Netherlands**, individuals in the centre have access to the following facilities/activities: work, sports, library, creativity, music, education, and religious meetings. At least six hours of recreational activities are foreseen per week.

In **Belgium**, leisure is ensured through cultural and sporting activities; access to a well-stocked library; access to several TV's, video/DVD players, books, newspapers and magazines, available in several languages.

c) The EU *acquis* and international principles¹⁷¹ - Recommendations

- Sports (volleyball, ping pong, etc.) and recreational activities should be foreseen daily both for children and for adults. In particular, residents should have access to a library with books in different languages.
- Individuals should be granted the opportunity for physical exercises in appropriate areas (outside) and to use recreational equipment (such television, etc).¹⁷²
- Outdoor recreation areas should be accessible to the resident within the set time frame, which should not be less than 2 hours per day.
- Children should be given the possibility to engage in play and recreational activities. Likewise group activities should be foreseen for both children and young adults. The creation of a playground is recommended.
- The provision of vocational training is not consistent with the scope of the centre and with the length of residents' stay.

¹⁷⁰ Article 18 of the ICCPR; Article 9 (1) of the ECHR, paragraphs 6 (1), 41 and 42 of the UN Standards Minimum Rules; principle 33 of the UN Body of Principles.

¹⁷¹ Article 18 of the ICCPR; Article 9 (1) of the ECHR, paragraphs 6 (1), 41 and 42 of the UN Standards Minimum Rules; principle 33 of the UN Body of Principles; Guideline 11 (3) of the CoE Guidelines on Forced Return; paragraph 38 of the United Nations Rules for the protection of juveniles deprived of their liberty, adopted by General Assembly Resolution 45/113 of 14 December 1990.

¹⁷² Article 13 of the CESC; Article 28 of the CRC; Guideline 10(2) of the COE Twenty Guidelines on Forced Return; CPT/Inf (97) 10.B.29; paragraphs 21 and 40 of the UN Standards Minimum Rules.

4.3.1.10. Education

a) The Albanian situation

The Regulation does not provide for educational possibilities for children.

b) Other current practices

In **Belgium**, children's right to education is taken in high consideration. For this reason, detention of children is usually kept as short as possible (for the few days that precede their removal). Social workers and educators carry out educational activities in the centre, as no access to public school is allowed from the centre. In addition, language and other training courses are available.

In **the Netherlands**, children's education is ensured by the assistance of specialised social workers and the use of equipment (i.e. computers), which facilitate communication in different languages.

c) The EU *acquis* and international principles - Recommendations¹⁷³

- Whether in detention facilities or not, children have a right to education and to leisure. The provision of education should be subject to the length of their stay and the individual circumstances.¹⁷⁴
- Educational activities could be carried out by specialized social workers. Basic educational activities appropriate for children speaking different languages (and who would not have the time needed for undertaking any language training) should be undertaken.
- Special attention should be given to the education of foreign juveniles with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

4.3.1.11. Security and Safety¹⁷⁵

a) The Albanian situation

- Article 8, paragraph 10, of the Regulation states that, in case the order in the centre is undermined, the Police General Directorate should take the necessary measures in order to re-establish order.
- In the existing NRCs, security is monitored by Police staff. In the case of the NRC for Asylum Seekers, one police officer is always present in the centre, and is dependent on the Police Directorate, with which the institution running the centre has signed a specific MoU.

¹⁷³ Articles 3, paragraph 1, and 28 of the CRC; Article 13 of the CESC; Guidelines 11 (3)(5) of the COE Guidelines on Forced Return; paragraph 38 of the UN Rules for the protection of juveniles deprived of their liberty; paragraph 8 of the UN Standards Minimum Rules; UNHCR Guidelines on the Detention of Asylum Seekers.

¹⁷⁴ Guideline 11 (3) of the COE Guidelines on Forced Return. The inspiration of this Guideline was also found in para. 38 of the United Nations Rules for the protection of juveniles deprived of their liberty, adopted by General Assembly Resolution 45/113 of 14 December 1990, which applies to any deprivation of liberty. According to para. 38: "Every juvenile of compulsory school age has the right to education suited to his/her needs and abilities and designed to prepare him/her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education".

¹⁷⁵ This section mainly addresses security inside the institution. For the security outside and for the technical equipments necessary to ensure security and safety, refer to the Geographical Component below.

b) Other current practices

In **Belgium**, the internal and external security of the centres is guaranteed by Security assistants, who are civil servants and who monitor the life within the centre 24-hours a day. Security staff members wear uniforms and are not armed (only in case of emergency they may have access to light arms, i.e. velcro bans). The bedrooms of the individual residents are never locked from outside. A list of forbidden objects is distributed to the migrants upon arrival at the centre. Sanctioning is a system of gradual measures, starting with a verbal warning and gradually moving to solitary confinement in extreme circumstances (for a maximum of 24 hours, extendible up to a maximum of 72 hours).

In **the Netherlands**, security is mainly guaranteed by security officers and through the use of technical security equipment. Half of the security officers are contracted from an external security agency and the remaining half is directly managed by the institution in charge of running the centre (all of the staff is trained equally). Within the latter 50 per cent, 25 per cent receives special training, to face emergencies and crises. Police officers are not allowed to intervene into the life of the centre,¹⁷⁶ unless its presence is expressly requested, but the use of firearms is always forbidden (a specific safe is located at the entrance where police officers are requested to leave their fire weapons). A list of forbidden and admitted objects is delivered to residents upon arrival (i.e. objects of a discriminating, offensive or militant nature; fire arms; etc.). Control is also exercised through inspection of the living accommodation, examination of body and clothes, etc. The bedrooms of the individual residents are locked from the outside during the night. Corrective measures can include: being excluded from participation in one or more activities; isolation (in an isolation cell for two weeks at the most); deprivation of visits for a period of time; or a fine. Inside the institution a few people are specifically trained for emergencies and have access to extra means, such as helmets, shields, handcuffs, etc.

In **Hungary**, the security in the centre is responsibility of the Hungarian border police. The guards are of mixed gender. Every two years the guards undertake psychological screening.

c) The EU *acquis* and international principles¹⁷⁷ - Recommendations

- Security and safety represent very sensitive issues that must be balanced with respect for the human rights of the individuals in the centre.
- Security and safety should be guaranteed at all times within and outside of the centre and, preferably, by the same institution.
- Security officers and other staff members working within the centre should be civilians. However, the Albanian state police might play a role in ensuring security outside the centre, within the fences. Most European Countries, however, avoid this option and they prefer to deny to police officers entrance into the centre, unless requested.
- Firearms and other weapons should not be allowed within the centre and should be impounded upon entry.
- Security guards maintain security and order in the facility according to the framework established by the management staff and by the national authorities.
- Security guards should be only very lightly armed. The only forms of restraint acceptable should be those that are strictly proportionate to the action of the resident and whose aim is strictly to control the perpetrator.

¹⁷⁶ However, the Dutch military police carries out the removal itself.

¹⁷⁷ Security and safety guidelines are based on information found within the Belgian Royal Decree of 02.08.2002 *On the functioning of the closed reception centres*.

- Security staff members should have training that defines which are the means of restraint and in which circumstances they may be used. Minimum regulations or guidelines should define the corrective measures allowed, the means of restraint, the circumstances under which they may be used, and the risks linked to their use.

4.3.2. Vulnerable categories

a) The Albanian situation

- The Albanian Regulation mentions that all necessary measures will be taken to ensure that women and children are separated from men, except the cases when they are of the same family.¹⁷⁸
- The Regulation also mentions in very vague terms that unaccompanied minors should be provided with the necessary care, as established by the Convention on the Rights of the Child. It is not further clarified if they will be detained, and if so under which specific conditions.¹⁷⁹
- No further mention is made of other vulnerable categories.

b) Other current practices

In **Belgium**, the detention of pregnant women is decided based on a case-by-case basis, as in the case of elderly people (taking into consideration their health conditions). The detention of families should be kept as short as possible. Once young persons have been identified as minors (medical tests are sometimes necessary) and neither parent(s) nor guardian(s) can be found, they are entrusted to the care of a legal guardian appointed by the Federal Office of Justice. In these cases, minors are released immediately.

In **Hungary**, families and pregnant women are given their own facilities; women who have given birth are frequently housed in a women's care centre; unaccompanied minors are not detained.

At the Short-Stay Immigrant Centre in Ceuta, **Spain**, the most vulnerable groups within rejected asylum seekers, principally families with young children, the sick and the elderly, receive a residence permit on exceptional grounds and are included in NGOs reception programmes.

Examples of special institutions for migrants who suffered of torture or trauma are the Rehabilitation Centre for Torture Victims and Crisis Prevention Centres for Immigrants in **Finland**, and the specialized centres for psychological treatment in **Belgium** and in the **UK**. Moreover, in Europe, there are also best practice guidelines relating to the guardianship of separated children,¹⁸⁰ and this guardianship involves varying levels of supervision. In some countries, such as Germany and Italy, pre-existing national guardianship mechanisms are used, whereas there is a specialized system in Norway.

¹⁷⁸ Article 11, (e).

¹⁷⁹ Ibid.

¹⁸⁰ UNHCR and Save the Children Fund, *Separated Children in Europe: Best Practice Guide*, 2000.

c) The EU *acquis* and international principles¹⁸¹ – Recommendations

- Men and women should be separated from the opposite sex if they so wish; however, the principle of the unity of the family should be respected and families should therefore be accommodated accordingly.
- At the international and EU level,¹⁸² groups of persons who should generally not or only under specific conditions be detained have been identified.¹⁸³ These are the following:
 1. Unaccompanied children and persons under 18 years of age.¹⁸⁴ This category should generally not, or only under specific circumstances, be detained, and instead should be provided with special accommodation in facilities staffed with personnel capable of taking into account the needs of persons of their age - or subject to the assistance of tutors.¹⁸⁵ Tracing activities of members of their families should be undertaken at a very early stage.¹⁸⁶
 2. Accompanied children.¹⁸⁷ Children shall only be detained as a measure of last resort and for the shortest appropriate period of time and as a measure to maintain family unity.¹⁸⁸ The best interest of the child shall be of primary consideration. Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. They also need as special care in terms of clothes and food.¹⁸⁹
 3. Families detained pending removal should be provided with separate accommodation guaranteeing adequate privacy.¹⁹⁰
 4. The elderly. The elderly also have special health and psychological needs, and may require supervision.
 5. Pregnant women and nursing mothers. They should generally not or only under specific conditions be detained, unless there is the clear threat of absconding and medical advice, approves detention. These categories require a special treatment in terms of medical care, pre-natal treatment, food and clothes.¹⁹¹
 6. Persons who are sick, are suffering from serious medical conditions or are mentally ill, have serious disabilities, or people for whom there is independent evidence that they have been tortured or mistreated. They should be detained only under specific conditions and subject to special treatment (in terms of food, clothes, medical assistance)
It is recommended that migrants belonging to one of the last three categories be entitled to more liberal regime.¹⁹²

¹⁸¹ Guideline 10, paragraph 4, and Guideline 11, paragraphs 1 and 2, of the COE Guidelines on Forced Return; paragraphs 8 and 23 of the UN Standard Minimum Rules; EC Communication 564/2002; Article 10, paragraph 2, and Articles 17 and 23 of the ICCPR; Article 3, paragraph 1; Article 9; Article 20, paragraph 1; Article 22, paragraph 2; and Article 37 of the CRC; Article 15, paragraph 3, of the Common Proposal for a Return Directive Article 3, paragraph 3, of the EU Council Resolution *On unaccompanied minors who are nationals of third countries*; Article 8 of the ECHR; Article 10 and General Comment 6 of the ICESCR; The CPT/Inf (93).

¹⁸² Communication 564 (2002) of the European Commission, *on a Community Return Policy on Illegal Residents*, 14 October 2002.

¹⁸³ For alternatives to detention that can be offered at these categories, refer to the Institutional Component, above.

¹⁸⁴ Unaccompanied children shall not be accommodated in this centre but a specific solution should be foreseen for them. See Article 11 (e) of the DCM number 46.

¹⁸⁵ Article 10 (2) of the ICCPR; Articles 20 (1) and 37 of the CRC; guideline 11 (1) of the COE Guidelines on Forced Return and Article 15, 3 of a Commission Proposal for a Return Directive.

¹⁸⁶ In line with Article 3(3) of the European Union Council Resolution of 26 June 1997 *On unaccompanied minors who are nationals of third countries*; refer also to Articles 7 and 22(2) of the CRC.

¹⁸⁷ For further analysis of this issue, refer to "Alternatives to immigration detention of families and children", a discussion paper by John Bercow, MP, Lord Dubs and Evan Harris, July 2006.

¹⁸⁸ Articles 3 (1) and 37 of the CRC.

¹⁸⁹ See also above for more details on Education.

¹⁹⁰ Articles 17 and 23 of the ICCPR; Article 8 of the ECHR; Article 10 of the ICSPCR; Article 9 of the CRC; Guideline 10 (4) and 11(2) of the COE Guidelines on Forced Return; CPT/Inf (93).

¹⁹¹ Principle 5 of the UN Body of Principles; paragraph 23 of the UN Standards Minimum Rules.

¹⁹² Some International NGOs (i.e. Jesuit Refugee Service) affirm that these special groups of individuals should never be detained given the negative impact of detention on their psychological and physical health and on the right to family unit.

4.3.3. Characteristics and Responsibilities of staff¹⁹³

a) The Albanian situation

The regulation does not foresee anything in this regard.

b) Other current practices

In **Belgium**, the staff is composed of a management team; medical service staff; social service members (certified social workers, pedagogues and at least one psychologist), security teams and drivers.¹⁹⁴ Most of the staff members work part-time and are called upon request.

The security team is divided as following:

- Deputy security assistants (supervisors of the security officers);
- Coaches who provide social guidance to the migrants;
- Security Officers who guarantee security and order.

In the **Netherlands**, all staff members are civilians, including the security officers, which are partially employed by the Government (50 per cent) and for the rest provided by a private company.

c) The EU *acquis* and international principles – Recommendations

- Personnel working within the centre should be civilians.
- They must wear badges, which clearly identify them as staff. The badges should contain the staff person's name and/or identification number.
- Staff should not be armed, except in exceptional circumstances.
- Staff working outside the centre (within the fences) might have police status, considering the specific case of Albania in which the Institution running the centre is the DBM, which is responsible to the State Police.¹⁹⁵
- The approximate number of staff members per resident in the centre can be suggested based on the experience of the other EU centres, balanced with the Albanian reality. Given that there are no international standards in this field, it is suggested that for Albania, 1 staff member be present per every 5 residents.¹⁹⁶

The division between staff employed on a permanent basis and staff called upon request is suggested.

Permanent staff in the centre should include:

- **Management.** Director, deputy-directors/joint managers should be present to oversee the overall functioning of the centre. The DBM should be responsible for managing and running the centre.¹⁹⁷
- **Administrative staff.** (for finance, staff, logistics, etc).
- **Medical Staff.** In institutions large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity. In other institutions a medical officer should visit daily and reside near enough to be

¹⁹³ Staff and responsibilities guidelines are based on information found in the Belgian Royal Decree of 02.08.2002 on the functioning of closed centres in Belgium and on the most interesting experiences of other European Member States.

¹⁹⁴ They depend from the Co-ordination Office (Transfer Section) of the Centre Directorate of the Immigration Service

¹⁹⁵ Please refer to the Institutional Component above for an explanation of the sharing of roles and responsibilities at the institutional level and the vertical relationships between the staff and the running institution and between the running body and the superior institution.

¹⁹⁶ In case of the Netherlands, where the technical security measures are really high, one warder is available per 12 detainees, while in Belgium there is one staff member per one detainee.

¹⁹⁷ Refer to the Institutional Component, section "The institution that will have the responsibility of running the centre".

able to attend without delay in cases of urgency. Nurses should be always present in the centre, in particular to provide medical examination at the moment of registration/intake of migrants.¹⁹⁸ Special attention should be put on psychological assistance, both in phase of registration and on a regular basis.¹⁹⁹ Connections should be established with hospitals for additional care. .

- Social workers. Social workers should be requested to have different skills and performing a variety of tasks. In particular, among them, counsellors, trainers, pedagogues, educators and teachers should be present. Professional and appropriate counselling should be provided regularly.
- Cleaning and kitchen staf. (to cook, and clean toilets, garden, common rooms, offices, etc).
- Drivers.
- Security staff.

Support staff (not employed permanently but called upon request), should include:

- Translators and interpreters. A list of translators/interpreters with different language skills should be always available and contacted when needed, especially in phase of registration of new residents. Translators should also be contacted in the case of legal counselling and to facilitate contact between the residents and the authorities.
- Specialised medical staff (i.e. gynaecologist, dentist, psychiatrist, etc.). They should be available when it is needed and be reachable also at the nearest civil hospital.
- Lawyers. They should be available upon request, and in particular in phase of registration and in the application for any judicial remedies undertaken by the migrants.
- Religious officials. Qualified representatives of those religions represented in the centre should be available upon requests and for periodic religious services and personal visits.

Some human resources may also be provided by the assistance of external institutions (i.e. international organizations, IOM, UNHCR, UNICEF, and various NGOs). In particular, given their experiences and skills acquired in previous activities addressed to vulnerable categories, these organizations might support the centre providing counselling, social assistance, educators, and social workers. According to the needs of the centre and upon request of the running institution, some basic services (legal and medical aid) might be outsourced (i.e. provided by International Organisations – IOM, UNHCR).

The possibility of sharing resources with the NRCs existing in Albania should be better explored by the Institution running the centre, due to the fact that these centres already have experience in these matters.

4.3.4. Staff selection, Gender balance and the immediate Training needs of the staff

a) The Albanian situation

The Regulation does not foresee anything in this regard.

b) Other current practices

Regarding the training for the staff, the experience of the centres in the Netherlands was particularly interesting. Staff behaviour is considered as a crucial aspect in the management of the centre and as such, particular attention is paid to the staff training activities. For example, the 25 per cent of

¹⁹⁸ See registration/intake above.

¹⁹⁹ Refer to the section on medical care above.

the total staff receives a special training, in order to face emergency and crisis that might occur in the life of the centre. Staff are, *inter alia*, trained on:

- In-house emergency and first-aid service;
- Security and Safety issues;
- Calamities;
- Diversity in communication;
- Elementary self-defence;
- Integrity;
- Violent situations and what to do;
- Report writing.

c) The EU *acquis* and international principles²⁰⁰ – Recommendations

- Staff should be selected with great care, which due consideration of personal qualities and professional skills (both on theoretical and a practical level).
- It is important to ensure gender balance within the staff. Women should be attended and supervised only by female officers, even though male members of the staff, particularly doctors and teachers, should be allowed to carry out their duties also on all residents.
- Staff should receive appropriate training. Immediate training needs for the staff might include:
 - Human rights standards and human rights protection, in particular with regard to vulnerable categories (i.e. children, women, etc.);
 - Law on migration and asylum (international and national legal framework);
 - Counselling skills;
 - First aid;
 - Interpersonal communication skills and stress management;
 - Security/safety issues, including impostor recognition and risk profiling, correct handling of suspects and evidence;
 - Geographical and cultural aspects of the main country of origin of migrants;
 - Relevant language skills;
- Calamity planning.
- The training of the staff should take place after the procedure of selection, with relevant updating during the course of the employment.
- A manual of formalized Standard Operating Procedures should be given to all staff to ensure proper operation. Such manual should be used nationwide and be reviewed regularly.
- Authorities should seek assistance from specialized agencies, NGOs and international organisations (such as IOM, UNHCR, etc.) to provide training. The Border Guard and the Police Academy could also provide training.

4.3.5. Internal Regulations, Complaint mechanisms, Monitoring activities, Transparency and Data protection

a) The Albanian situation

The Regulation does not foresee anything in this regard.

²⁰⁰ Guideline 10 (3) of the COE Guidelines on Forced Return.

b) Other current practices

In the **Netherlands** there are three main internal regulations (general regulation for the staff, one for the security staff, another regulation for residents). Monitoring activities are carried out by the supervisory committee (7-9 persons), which is an independent body and it is composed of members of different backgrounds which have unlimited access to all places and people within the centre. Each supervisory committee has a special complaints committee, which consists of three members. Complaints can be filed in respect of any decision related to the resident taken by or on behalf of the director. The individual making the complaint has the right to legal counselling. Every effort is made to engage the services of an interpreter. The complaint committee makes a judgement in writing as soon as possible (4 weeks). Under special circumstances this period can be extended to a further maximum four weeks. An appeal can be lodged by the resident or the director to the Appeal Committee of Council for the Administration of Criminal Justice and Youth Protection, against the decision of the complaints committee. The decision taken by the council is binding on all parties.

In **Belgium** too, monitoring activities are regular and conducted both internally and through external bodies.

c) The EU *acquis* and international principles – Recommendations

- A **regulation** and standard of conduct for the staff should be drafted, which should provide information on duties, tasks, and relationships with residents, sanctions in case of violations, etc.
- A regulation should be drafted for residents, informing them of their rights, obligations, relationships with residents and staff members, timetable of outdoors activities, religious, leisure and other services, timetable and rules for external visits, disciplinary regime, details of the complaints system, etc. The regulation should be made available and explained to all individuals during the intake phase.
- The closed centre should allow residents to submit **complaints** regarding: conditions of their detention; abuse inflicted by other residents and/or staff; allegations of criminal behaviour, claims for civil damages (i.e. inadequate handling by officials), poor services and practices (badly cooked food, lost property); against the content of a decision and a disciplinary findings.²⁰¹
- All complaints made by resident of the centre should be submitted within a certain date from the event and should be thoroughly investigated with appropriate action taken. Those lodging the complaint and witnesses shall be protected against any ill treatment or intimidation arising as a result of their complaint, or the evidence given to support it.²⁰²
- Within the centre, periodic **monitoring activities**²⁰³ should be regularly foreseen. The centre should have an independent body monitoring detention conditions and reporting to the public authorities. Monitoring should also be regularly conducted by recognized independent monitors such as national commissions, ombudspersons, members of Parliament, or NGOs.²⁰⁴ The state shall ensure that international and non-governmental organisations (such as UNHCR and IOM) have the possibility to visit custody facilities in order to assess the adequacy of the conditions. Such visits may be subject to authorisation.²⁰⁵
- The detaining authorities should make available detailed **information** on relevant policy,

²⁰¹ Article 2 (1) and 3 of the ICCPR; Article 13 of the ECHR; Article 13 of the CAT; Guideline 10 (6) of the COE Guidelines on Forced Return; paragraph 36 of the UN Standards Minimum Rules; principle 33 of the UN Body of Principles.

²⁰² Refer also to the Legal Component.

²⁰³ On this regard, see the example provided by the Netherlands.

²⁰⁴ Guideline 10 (5) of the COE Guidelines on Forced Return.

²⁰⁵ Article 15 (4) of the Commission Proposal for a Return Directive.

practice and statistics in order to ensure transparency. The following information should be made public regularly: total number of residents, the range of length of detention, conditions in the detention centre, standard operating procedures and standards of conduct. The files of residents and other matters related to detention should be available in electronic form and collected in archives. Specific bodies or legal representatives should be granted access to detention centres to demonstrate and strive for transparency and accountability.

- The issue of **data protection** and privacy should be taken in high consideration,²⁰⁸ in accordance with the provisions established by Albanian law and by the relevant EU *acquis*.

4.3.6. Material resources needed for the centre

a) The Albanian situation

The current Albanian Regulation does not foresee anything in this regard.

b) Other current practices

The practices of other European countries were not researched because of the specificity of the issue and because the list of resources depends greatly on the context of each country.

c) The EU *acquis* and international principles – Recommendations²⁰⁷

- Temporary custody shall be carried out in specialised temporary custody facilities. Care should be taken in the design and layout of the premises to avoid the impression of a “carceral” environment.²⁰⁸
- Persons detained pending removal should be accommodated in facilities specifically designated for that purpose and which is adequately furnished, clean and in good state of repair and which offers sufficient living space for all residents and staff members.²⁰⁹
- Where accommodation cannot be provided in a specialised facility, it must be ensured that foreign nationals under temporary custody are permanently physically separated from convicted criminals.²¹⁰
- As per creation of the centre, the following material resources are necessary:
 - Bedroom furniture (*1 bed per person, cupboards, side beds tables, towels, bed-linen, etc.*)
 - Kitchen material (*fires, fridges, shelves, etc.*)
 - Bathroom furniture
 - Furniture for the reception area (*tables, chairs, etc.*)
 - Furniture for the religious area
 - Safes
 - Furniture for the visiting area (*tables, chairs, etc.*)
 - Material for the canteen (*tables, chairs, etc.*)

²⁰⁸ Article 17 (1) of the ICCPR; Article 8 of the ECHR; Guideline 11 (2) of the COE Guidelines on Forced Return; CPT/Inf (97) 10.C.31.

²⁰⁷ The issue of size and square meters for the different spaces has been more specifically addressed by the Geographical Component.

²⁰⁸ Guidelines 10 (1) (2) and 11 (1) of the COE Guidelines on Forced Return; Article 10 (1) of the ICCPR; principles 1 and 8 of the UN Body of Principles; paragraph 1 of the UN Standards Minimum Rules.

²⁰⁹ Article 3 of the ECHR; Guideline 10 (2) of the COE Guidelines on Forced Return; paragraphs 9-14 and 19 of the UN Standards Minimum Rules.

²¹⁰ Article 10 (2) of the ICCPR; Guideline 10 (4) of the COE Guidelines on Forced Return; paragraph 8 of the UN Standards Minimum Rules.

- Material for the storage room (*shelves, cupboards, etc.*)
- Laundry equipment
- Material for recreational and vocational activities (indoor) for adults (*TV, ping pong, table games, etc.*)
- Material for recreational and educational activities (indoor) for children (*TV, different kinds of toys, table games, books, drawing material, etc.*) with a special attention to children of different ages
- Material for recreational activities (outdoor) for adults (*sport equipment, i.e. volleyball, football, etc.*)
- Material for recreational activities (outdoor) for children
- Books in different languages for a small library
- Medical equipment for the infirmary
- Telephones and other means of communication
- Machines for drinks and food
- Security equipment (*fire extinguishers, etc.*)
- Leaflets and informative materials
- Cars for transportation

The quantity of these materials should be decided on the basis of the capacity of the centre and of the approximate average number of residents.

Daily living supplies

- Food
- Bedding (blanquettes, bed linen, towels, etc)
- Toiletries (toothpaste, toothbrush, soap, shave, etc.)
- Cleaning Articles
- Clothes
- Medicines

4.3.7. Estimate of providing the centre with the needed resources

a) The Albanian situation

- Article 9 of the existing Regulation states that the cost of accommodating irregular migrants in an NRC is to be borne by the Ministry of the Interior.
- At the NRC for VoTs, the daily cost (all inclusive) per person is about 70-80 US \$. The calculation of other costs is based on their daily and weekly needs. The budget is prepared only once a year and is attached to the programme of the centre, which contains a list of all the human and material resources needed for the centre on a annual basis with their relative costs. All the costs of the centre are covered by MOLSAEO, which approves the budget annually.
- The cost per person a day at NRC for Asylum Seekers, for food, is 235 Leke.
- In both centre the running costs are yearly included in the budget of the ministry concerned (to either the MOI or the MOLSAEO).²¹¹

b) Other current practices

Detention usually has high financial costs. For instance, per day and per person, in Berlin, Germany it costs 60 Euros, in Bologna, Italy 89 Euros.²¹²

²¹¹ In Albania, prisons spend roughly 80,000 Leke per month on each person.

²¹² Detention in Europe, JRS-Europe Observation and position paper, 2004.

In **Belgium**, the approximate total cost for accommodating each person a day is about 250-300 Euros.

In **Hungary**, roughly the total cost per person a day is about 3000 Forint (equivalent to approximately 12-13 Euros).

In **the Netherlands**, the total running cost of the centre is 138 Euros per day per person (all inclusive). The institution responsible of the running of the centre is in charge of preparing a yearly plan. In practice the budget devoted to running the centre in the Ministry of Justice is an open budget, roughly estimated on the number of detained migrants and on the expenses of the previous years. When the budget allocated is not entirely used, a portion of the remaining funds is returned and the other part is used for the following year. The centre outsources its main services (catering, medical assistance, etc.).

c) The EU *acquis* and international principles – Recommendations

- It is suggested that every year the MOI allocates part of its budget for the centre. This will enable the centre to fulfil its objectives in compliance with EU and international standards.
- It is not easy to estimate future management costs, since the cases studied refer to different type of centres or to similar centres in different contexts. Nonetheless, the list of the items necessary for the running of the centre might provide an approximate figure of the material and financial resources needed.²¹³
- The experiences of other centres²¹⁴ and of other countries show that external NGOs, IGOs and associations can play an important role in providing some services and consequently covering some expenses (i.e. accommodation for vulnerable categories, medical and legal assistance).
- For this reason, the use of such organisations, which are more experienced in providing certain services, is suggested. This will be more cost effective and it will guarantee high-quality assistance.

CONCLUSIONS

Since no closed reception centre for irregular migrants exists in Albania, and consequently no practice in this field is available, the recommendations provided in this paper are mainly based on the principles enshrined in international and EU documents and on the practices of other EU countries. The experience of the two NRCs in Albania has also been an important indicator in particular with regard to envisioning possible costs and practical implications.

The starting point for the human component assessment has been the only Albanian document available in this field (Decision No. 46, date 07.02.2002, approving the Regulation). A comparison with international recommendations and practices of other countries shows all the limits and inconsistencies of the national legal framework currently available.

²¹³ A suggested next step on this regard might be to try to calculate more accurately the possible costs.

²¹⁴ At the NRC for Victims of Trafficking legal support and medical assistance is often provided by international organizations (IOM and Legal Clinic for Minors).

For this reason, it is suggested to amend and to redraft the legal framework for the establishment of the centre in order to fill the existing gaps and to make it more comprehensive and less fragmented,²¹⁵ by including all the human and material issues that it is essential to consider in the establishment of a centre of this kind. In addition to this, a detailed internal regulation will be needed for the centre to address all the practical aspects. In this light, it is suggested that an official working group might be established in order to prepare the needed legal framework, which will then remain applicable in case of future centres of the same type. This will ensure the compliance with the EU *acquis* and international principles in the field, in particular with the human rights standards in place, to which Albania is already bound.

²¹⁵ Please also refer to the Legal Component for other comments and recommendations on this.

4.4. THE GEOGRAPHICAL COMPONENT

Introduction

The Geographical component originally aimed to deal with the selection of the most fitting location for the centre and the executive architectonic project for the construction of the centre itself (with the involvement of an external design company). This component has addressed other associated issues, such as the legal documentations to be taken into consideration and the criteria for the identification of the most suitable site. In this process, the elaboration of the Terms of references for the Project Design of the Centre was particularly relevant. The main scope was to outline the architectural and structural requirements in line with the major results of the other assessment components (in particular the Human-Material Component) and with EU and International principles in the field.

The work done under this component has mainly been based on the national legislation in the field, the practices of other European countries and on available international principles (although this represents a technical matter that has been mostly addressed at the national level and not through common general standards).

The structure of this section differs from that of the previous components. It will not replicate the four-section structure presented above, as the Albanian situation in the field is not relevant here. Moreover, the relevant EU *acquis* and international principles that have been addressed in the Human-Material Component have been here translated into practical/technical recommendations. As a result, the information included in this component is organized according to the progressive steps followed in the process.

THE STEPS FOLLOWED IN THE PROCESS OF THE GEOGRAPHICAL ASSESSMENT

Step One: the two scenarios and the relevant legislation

At the start of the geographical assessment two scenarios were taken into consideration for the creation of the centre. These scenarios were:

Scenario 1: the retrofitting of an existing (i.e. abandoned) building

Scenario 2: the construction of a new closed reception facility from scratch on unoccupied land.

For both scenarios, it was necessary to consider the legal permissions required for any kind of construction, which are relevant either at the national or at the municipality level. Specifically, the permissions referred to the connection of the future buildings with the infrastructure grid already existing (i.e. electricity and water, sewage, and telephone); environmental permission; earthquake and fire protection permissions, etc.

Step Two: the criteria for selecting the best site

In the process of the selection of the most appropriate location for the centre, the involved parties agreed on certain basic requirements. First, it was agreed that the location of the centre should be

Albanian Government owned land or property, as supposed to private property, in order to keep down the costs and to ensure that no problem might be encountered in phase of management by the Government institutions.

Secondly, in accordance with result of the institutional component, it was agreed that the centre should normally be able to accommodate 100 people, with a maximum of 150 residents. It was also agreed that the site selected should have the possibility to expand the facility for up to 200 people if necessary in the future.

The **criteria** that were considered referred to the distance from the main border points, the distance from the urban area and from the main emergency facilities (i.e. fire department, hospital, etc.), as well as the availability of the basic utility infrastructure. In particular, it was agreed that the location of the centre had to reflect the scope of the centre; i.e. as centre for irregular migrants pending removal. As such, it was generally agreed that the centre should be located in an area equally distant from the main border points, in particular the airport (but also the main ports and land border) and from Tirana. It was agreed that in principle the centre should be located outside of an urban area, but also easily reachable by the emergency facilities – i.e. a hospital, and the fire brigade. Other infrastructural aspects were also considered - i.e. the need for the future centre to have access to running water, electricity, and be easily connected to the central road system.

By this stage, a final decision had to be taken whether the centre could be built from scratch or whether a suitable existing building could be identified, to be modified to the needs of its future residents.

Step Three: site visits and the selection

Through a list of available state property, five sites were selected based on the criteria outlined in step two.²¹⁶ The list of potential locations was provided by the Albanian Ministry of Defence (MOD), which is one of the Ministries with the largest land ownership. The MOI, which is responsible for establishing and running the closed centre, was found not to be in the possession of adequate property or land.

An IOM technical expert and governmental representatives (both from the DBM and the MOD) participated in a number of sites visits, after which specific technical reports were prepared to clarify whether and to what extent the different locations could meet the identified criteria. Out of five sites visited (all occupied by old and non functioning buildings), three were short-listed. Based on further review, the most fitting site was selected in accordance with the criteria and after consultation with stakeholders.²¹⁷

It was also recognised that buildings present on the selected site were not suitable owing to their poor state of repair. It was also clear that there was no site that was free of existing buildings, and hence these buildings would need to be demolished prior to construction. At this stage it was considered more cost effective and more appropriate to recommend the creation of the centre from scratch.

²¹⁶ The sites, which were visited, were: 1) Military base, Kareci, Maminas 2) Military base, Ndroq , Kasinja Bridge 3) Military Base, Peza 4) Military Base, Marikaj 5) Military Base, Ndroq Commune.

²¹⁷ The most suitable site which was selected was the Military base, Kareci, Maminas, Durres District.

Step Four: change in the administrative status of the site

The issue of landownership had a significant impact on the work of this component. It represents a particular constraint in the Albanian context, where land restitution has not been completed and remains highly politicised.

Once the best site was identified, it was necessary for the MOI to request the transfer of administrative use of the property from the MOD.²¹⁸ Previous experience has shown that it is in the interests of all parties that the entity responsible for the running of an object should also be responsible for the property/land that the facility is constructed on.

According to the Albanian procedures, this kind of process implies a number of steps, in order to verify that the location is free from property disputes. Once it was ascertained that the site was free of private claims, the transfer of administrative responsibility for the property from one Ministry to the other one (with relative modification of the administrative use of the land itself) got underway.

Step Five: the bidding process

The bidding process aimed at developing a Project Design for the centre represented a crucial element in the course of action.²¹⁹

This process consisted of two main phases:

Phase one: the development and presentation of project idea

The information gathered by the other components based on the EU *acquis*, international norms, and the experiences of other European countries, also as elaborated by the other components of the assessment, was critical in developing this two-phase approach for the design of the centre.

In conjunction with the stakeholders (and given the fact that no such centre exists in Albania), it was decided that an open competition would be the best way to raise debate on the centre, and to enable design companies to propose a range of possible options for the creation of the centre. In this respect, the companies were orientated by the elaboration of the organization and methodology to be used and the presentation of the project idea²²⁰ (together with CV of the experts). A special focus was placed on security/safety aspects and on the respect of human dignity of the residents of the centre. Another important aspect was to ensure that the centre could be expanded in the future without implying significant changes to the existing infrastructure.

An open exhibition was held in order to enable interested entities to examine draft technical drawings and to discuss their project idea with the companies. The open exhibition was preceded by a presentation to the donors, the European Commission, and the Hellenic Ministry of Interior, and by the Albania's Deputy Minister of Interior. This enabled maximum visibility for the project

²¹⁸ It is worth clarifying that the property of the land itself has not been transferred from one Ministry to the other one. Only the administrative use of the land is actually changed.

²¹⁹ Once the design of the centre has been finalised, the construction of the facility is likely to take place within a contractual agreement within the framework of CARDS funding for Albania for 2004.

²²⁰ The presentation of the Project Idea consisted of the general presentation; presentation of site layout and building configuration; concept layout of internal rooms division; security plan including emergency evacuation; internal logistical movement concept of personnel, supplies and residents; sketch plan, elevation and section views of the building; sketch presentation of how the project will be implemented.

ideas, while presenting them to the Albanian public for the first time. In order to select the successful design studio, the evaluation²²¹ of the project ideas and the selection of the winner was done by a Bids Evaluation and Award Committee, made up of all relevant stakeholders and beneficiaries.²²²

Phase two: the final project design

This second phase aimed to produce a final project design for the future construction of the closed reception centre including equipment and furniture, living/dormitory departments for the residents, common spaces, all structural elements of the centre, infrastructure package and any other sections as outlined in the Terms of References (TORs) given to the Companies. In particular, the final project design had to be detailed enough in order to allow for construction without the need for further design input.

Five pre-selected companies (all of which met the needed requirements in terms of legal background, previous experience, and experts skills) were requested to prepare and submit a Project Idea for the Design of the centre (phase one). Detailed TORs were prepared by IOM and reviewed and approved by the Albanian MOI. The TORs were completed by guidelines on methodology and organizations to be followed by the Companies as part of their contractual requirements. In addition, the TORs included two annexes, elaborated by IOM as reference for the work.

The two annexes attached were the following:

ANNEX A: Specification for spaces. This was elaborated by IOM as guidelines for the design company with regards to the nature and scope of the facility (in consideration of international and EU norms and standards, as well as of IOM position). More particularly, Annex A provided companies with a detailed explanation of the basic aspects to consider, mainly in terms of security and safety of residents and staff, and in terms of human rights and dignity of the detained individuals. Moreover, it contained a detailed explanation of the different departments to envisage their main functions and the connections between them.

ANNEX B: Area estimate. This annex dealt with the separation of different departments and sections in the centre, together with the indication of minimum surface area of each room. However, also the area estimate was intended only as a guideline to be further reviewed. In particular, the companies were requested to increase sizes and spaces, wherever possible, in order to ensure the respect of human rights and dignity of the residents of the facilities, in particular in the living quarters.

Step Six: the final project design

Once the best project idea was selected, a process of further elaboration of this idea into the final project design was carried out by the winning company, in conjunction with IOM. The consultations aimed to ensure the integrity of the scope of the centre and the overall philosophy of the work, balancing it with technical requirements. At the time of writing, the process of consultation and finalisation was still ongoing.

²²¹ The open exhibition also included: the media, and representatives from the Government, International Organizations, and NGOs.

²²² In particular, the Bids Evaluation and Award Committee was composed of representatives from IOM, the DBM (as it was the main beneficiary/counterpart of the centre and the project in general), EC delegates (as EC is the main founder of the Project) and a Lawyer, expert in the field, who followed the Bids Process from the beginning. A representative from the Hellenic Ministry of Interior, Public Administration and Decentralisation was also invited.

Main geographical and architectonic aspects of the centre

The facility was envisaged to be designed to accommodate 100 residents (in the first construction phase), with future expansion to 200 residents. All structural elements have been planned as integral part of final project design (i.e. the centre is put in the conditions to be operational even with the capacity of 100 individuals). The common functional elements and the infrastructure package were elaborated with 200 residents in mind.

- In line with international and EU standards, persons detained pending removal should be accommodated in facilities specifically designated for that purpose,²²³ capable of offering material conditions and a regime appropriate to their legal situation.²²⁴
- IOM proposes that care should be taken in the design and layout of the closed reception centre, to avoid, as far as possible, any impression of a "carceral" environment.²²⁵

The general layout of the centre has been considered to allow future expansion, as explained before, with the possibility to add a wing to the structure already envisaged. On the other hand, it has been foreseen that some sections, or whole departments, could be locked and left unused if the centre is not running at full capacity. It should also be possible to restrict the heating system to certain areas of the centre to reduce running costs. At the same time, such restrictions should not diminish or hamper safety and security safeguards.

The project plan had to take into account two principle elements of equal importance: the safety and security of residents and staff on one hand, and the resident's human rights and dignity on the other.

To this purpose, the following aspects were considered and translated into the architectonic design:

- **The preference for an open regime.** It is suggested that the centre be subject to an "open regime" in which the individuals are free to move around all areas of the building during the day as "far as possible". In principle, it should be possible for individuals to either choose to stay in the department during day and night, or to interact during the day with the fellow residents – i.e. women, families, etc. However, the residents should not have free access to the administrative sections of the building, or to the entrance/reception section. Moreover, it should be possible for different departments to be closed off to enable the Government to decide if in practice a more restrictive regime is needed once the centre is operational.
- **The principle of separation of living departments according to the different groups of migrants (i.e. men, women and families).** This separation allows the residents to be free to move within their living section during night and day. This will also allow freedom of movement and a variety of activities for the residents during the day in their own department. Having individual departments for each group guarantees security, as the different groups are not necessarily in contact with the residents of the other departments (if decided as such by the relevant authorities). Nonetheless, common areas accessible to all groups are foreseen to enable freedom of movement within the centre. It is technically possible to use the common areas by all three groups. However, it should be technically and logistically possible that the common areas be closed at night, without disrupting the functioning of the centre.
- For security reasons, and on the basis of experiences of other European countries, it has been suggested to have **living/dormitory departments planned in order to accommodate a group of a maximum capacity of 50 individuals**, as it appears to be easier to manage small

²²³ Article 15 (2) of the Commission Proposal for a Return Directive.

²²⁴ Refer to the recommendations prepared under the Human Component.

²²⁵ Persons detained pending their removal from Albania should not be held together with ordinary prisoners.

groups and also to separate men of the same nationality/ethnic group.²²⁶ This does not mean that the departments cannot be smaller, in particular as far as concerns the departments for women and families. On the other hand, this does not deny the possibility to foresee for special occasions (i.e. religious holidays, etc.) different groups to mix freely with one another.

- **Attention to the specific needs of each group.** In this respect, for example, the living sections foreseen for families have been planned in order to include specific spaces (i.e. small kitchen, recreation room for children), which are more responding to families' needs.
- All facilities should be accessible by **disabled people** and particular attention should be put on the need of **vulnerable categories** (i.e. children, sick persons, etc.).
- The need to draw the different sections in order to guarantee **residents' human and material needs** (i.e. right to communicate with the outside, to receive visits, to legal assistance, to health care, to recreation, etc.).

In light of these general considerations, it has been proposed that each section of the centre be interconnected, but with the possibility of separating/closing these areas if necessary. In particular, the living quarters should be separated from each other, but with possibility of interconnection, if needed. Each living/dormitory department include individual bedrooms, and also common rooms for recreational and other activities (laundry, prayer room and recreational room). These common rooms should be accessible only for the residents of that section. Additionally, there should be a common area accessible to all residents (with kitchen, canteen, library, etc.), while the entrances for different categories (staff, residents, visitors) are separated from each others and the administrative area is utilized only by the staff.

The security and safety of the centre, for residents, staff and visitors' beneficial, has been considered and addressed through the following elements:

- The presence of various and interconnected **security offices**,²²⁷ located in the most sensitive points of the centres:
 - a security hub to monitor the security of the whole building (through the use of cameras, detectors, etc);
 - entrance security offices;
 - a central security office at the cross point of the living quarters;
 - a security team post per department.
- The fulfilment of international and European standards in fire safety, emergency exits, evacuation system, safety doors, intercom system, etc.

Different sections

The TORs provided to the design companies explain in detail all the sections to be included in the centre with the relative functions, the interconnections between them and the security aspects to be taken into consideration. A general explanation is provided below (further detailed in ANNEX 2):

²²⁶ For the 100 male residents, two male departments to accommodate 50 individuals each have been envisioned.

²²⁷ The security areas should be interconnected (IT connection and when it is possible logistical connection). They should be equipped with computers, CCTV and other relevant monitoring equipment. It is advisable that these areas be connected directly to the generator and the server room and be possibly operated 24 hours a day by the staff.

a) Entrance/reception section, which includes an entrance for residents (which gives access to the reception department for residents) and an entrance for visitors/staff members.

Within this area the **security hub** is located. This is a security space where all the security systems are centralised and controlled.

b) Administrative section

This section is solely accessible by the staff of the centre. As the running of the centre will be undertaken on site, a number of rooms should be foreseen, for the director of the facility, the financial staff, support services, social workers, security staff and a common room for all staff. This section should also include a meeting/training room for the staff and external visitors.

c) Common section

The common section should be used by all categories of individuals in the centre (men, women and families) and be directly accessible from all the living/dormitory sections. In particular the common section includes:

- A central security office (not accessible by residents);
- A kitchen and a canteen divided from one another but connected. Both facilities should be designed for approximately 50 individuals eating at a time, for a maximum of three times a day. Space for staff eating here should be also envisaged;
- A storage room, garbage room and a laundry room for staff;
- A library for residents;
- A space for the holding of light arms for the protection of staff and residents (not accessible by residents).

d) Living/Dormitory sections

The living/dormitory quarters are divided into separate areas: the security area, the isolation department, the female department, the male departments and the family department. Categories do not have access to each other's departments. At the centre of the living/dormitory area, there is a central security office, which has direct access and view into each department. Each department also includes a small "security team post" (an observation point for the security staff night and day) as well as some common rooms (i.e. recreational rooms; prayer rooms; laundry rooms, etc.).

Within the direct visibility and access of the central security office, and separate from the other departments, there are four special **isolation rooms** in which individual residents can be held for short periods of time.

e) Other indoor spaces

Adequate attention should be given to ensuring that the sizes and spaces envisioned in the centre enable the working of the centre for up to 48 hours independently of water, food and energy supplies. For this reason, other spaces should be foreseen to accommodate: generator(s); water tanks for emergencies; storage space for all comestibles, durables, etc.; heating and cooling systems; a room for computer server; etc.

f) Outdoor recreational space

Outdoor space (within a system of fences and gates) is needed to create playgrounds for children and sports grounds (volleyball, basketball, etc). The spaces are divided according to the individual departments. In addition to this, the outdoor space also includes a parking area, for vehicles to drive the residents to and from the centre and for delivering the needed supplies. Separate parking space for visitors is possible outside of the perimeter fences.

OTHER CURRENT PRACTICES

The experiences of other EU countries have been of great value in the work of this component, in particular in the elaboration of the TORs to be used by the design company as guidelines for the design of the centre.

As explained above in the methodology (section on Study Visits) several reception centres for irregular migrants were visited in Belgium, Hungary and the Netherlands. These case studies contributed to the development of certain principles (i.e. division of living departments according to the different categories, security and safety considerations, etc.), which then guided the elaboration of the general layout of the centre as well as the specification of other aspects.

In particular, in **the Netherlands** two centres were visited,²²⁸ which represented good examples of how to deal with different categories (as one centre accommodates only single men, often with a criminal background, and the other one accommodates families, men and women being divided in departments).

The *Harbour Centre (in Rotterdam)* is a detention centre for irregular foreigners awaiting removal. The centre was recently established with a capacity of 700 residents. Currently, only single men are accommodated in the centre. The centre applies a system consisting of three different main sections, which are used according to the phase of detention.

- a. There is a reception area, where all the activities of registration and intake are accomplished;
- b. There is a first-stay area, where the residents are kept for the first weeks of their stay in order to be properly briefed on the rules and the functioning of the centre (see Annex 2). Staff working in this area receive special training;
- c. There is a regular-stay area, where the residents spend most of their detention.

The Harbour centre is built on the sea (it follows a boat model and it is built with metallic pre-fabricated panels). The centre applies a quite high level of security; it uses metallic fences 3-4 meters high all through, a CCTV system, special reinforced materials for doors, windows, and walls.

The *Removal Centre at Rotterdam Airport* accommodates men, women and families (separated in different departments) pending their removal. The centre was built on the former premises of a helicopter garage. It is constructed with pre-fabricated metallic panels. The infrastructure of the centre (i.e. roads, sidewalks, sewage system, etc.) is perfectly functioning. The two-floor building is surrounded by metallic fences 4 meters high. Concrete blocks protect the fences from possible damages and external shocks. The structure of the centres consists of:

- Two different reception areas (one for residents, where a number of relevant functions are undertaken – registration, body check, inventory of residents' goods, impounding of forbidden objects, medical check up – and the reception area for visitors).
- Male departments.
- One female department.
- Isolation departments.

²²⁸ The two centres visited are the Detention Centre at Rotterdam Harbour and the Closed reception Centre at Rotterdam Airport. It has to be noted that, due to logistical and time reasons, the visits undertaken in the two centres were not comprehensive and did not cover all the sections of the centres nor all the activities. For this reason, the description touches only the aspects and the sections that were examined during the visit.

- One family department (with special rooms devoted to educational and recreational activities for children and a bigger outdoor space accessible both for children and adults, where a more liberal regime is applied).

In **Belgium**, the *Centre for irregular migrants in Vottem* was established in 1997 and opened in March 1999 on the site of a former military base. All existing buildings were destroyed and the centre has been built from scratch. The construction kept into consideration the special needs of a centre of this type and chose to apply the "cross system", also applied for other similar centres and prisons. This system guarantees a high level of security since the central security office is located at the crossing point of the different living departments that, in such a way, can be constantly and easily monitored.

The location of the centre was chosen because of its proximity to the different borders (with France, Germany and the Netherlands) and its closeness to the Airport of Brussels.

The centre accommodates 160 individuals, single men belonging to different categories of irregular migrants, except asylum seekers in procedure.

The centre is built on a surface of 16.000 square meters. It consists of two buildings, one used for administrative purpose and the other one as living department (two floors). The two-floor building is made of concrete bricks, surrounded by a double system of fences (5 meters high). The centre is separated into four departments with a maximum capacity of 40 individuals each. This structure is in line with the principle that smaller departments are safer and more easily manageable. Residents can freely move inside the centre during the day and they are allowed to two hours a day of outdoor activities and each department has its own outdoor space. The living department are separated to each other according to the different categories.

CONCLUSIONS

Through the work of this component, a location for the establishment of the centre was identified in line with set criteria. Moreover, detailed TORs for the design company were elaborated, including references to international and EU standards available in the field, the best practices of the countries visited, carefully adapted to the specific needs and features of the Albanian context. The process of transferring the administrative use of the site from the MOD to the MOI is currently ongoing.

The architectonic characteristics of the centre aimed to meet the long-term needs of the Albanian authorities regarding the detention of irregular migrants. Material and financial considerations as well as other practical aspects that might arise in the running of the centre also have been born in mind. The construction of the centre, based on the project design, is the final step in this process, but it goes beyond the framework of this assessment and of the project under which the assessment was funded.

GENERAL CONCLUSIONS OF THE ASSESSMENT

This report has presented the methodology and results of an assessment carried out over the period of one year for the handling, reception and return of irregular migrants, and in particular for the creation of a closed reception facility for irregular migrants pending their removal. This report mainly shows the gaps identified and provides recommendations on how to fill them. Recognizing that the EU *acquis* in the field is still developing and that common binding standards are not yet available, the experiences of other EU countries has been considered, wherever appropriate, to provide helpful examples that could be adapted to the Albanian context.

On the basis of the findings of the assessment, this report makes the following recommendations:

Institutional Component

The centre should accommodate between 100-150 individuals with the possibility for extension of up to 200 individuals. These figures were arrived at in order to meet the short-term needs of Albania, while facing changing circumstances in the following years. It has been suggested that the centre should mainly serve as temporary reception centre for irregular migrants pending their removal and the categories that will be there accommodated are in particular those third country nationals waiting for removal, irregular migrants who do not wish to return voluntarily and whose immediate return is not possible, etc.²²⁹ The institution running the centre is suggested to be the DBM (under MOI).²³⁰

The current institutional framework remains inadequate to fully reflect the various functions related to the migration management, and in particular to forced return and detention pending removal. In order to cover the needed functions, a responsible body for return and readmission should be created, possibly as Unit within the Sector for Foreigners and Migration (under DBM). In the future, a new directorate could be created within the MOI so that administrative regarding return and removal may be performed by a separate entity from the one that executes the order (i.e. the border and migration police). It is recommended that such a measure should not be undertaken immediately, and that time should be allowed for institutional strengthening in the short and medium term. Institutional coordination, currently insufficient, should be fostered, in particular with the pre-screening team, which coordinates the pre-screening process that represents the first step for handling irregular foreigners, as well as with the entities dealing with Asylum Seekers and the VoTs. Finally, according to the EU norms, priority should be generally given to voluntary return and the application of less coercive measures, as compared to detention (i.e. regular reporting to the authorities, deposit of financial guarantees, etc.), and they should be preferred over detention and adequately promoted.

²²⁹ In particular, the categories included are: third country nationals, readmitted to Albania based on the readmission agreements, who do not have any legal status in Albania and are not asylum seekers; people whose asylum application has been refused and who have exhausted any appeal against refusal; rejected, who do not wish to return voluntarily and that have failed to comply with the return order; people who have entered the country clandestinely, undocumented, insufficiently documented and/or fraudulently documented individuals; people who set out with the intention to live in the country permanently and working illegally there; over-stayers; individuals subject to removal on the basis of existing international agreement; individuals representing a threat to public order and national security or to public health.

²³⁰ For an in-depth explanation of the reasons of this choice please refer to the Institutional Component, section on "The institutional bodies involved".

Legal Component

The legal framework is vague and incomplete, and as such it requires extensive amendments and additions. The relevant provisions foreseen in the Law on Foreigners and other legal basis are insufficient and as a consequence necessitate the full redrafting of the chapters covering return. In particular, a specific Legal Act or disposition for the Establishment of the centre should be enacted as soon as possible, as the centre cannot be established without a legal basis.²³¹ All by-laws that will regulate the centre should clearly stipulate the categories of individuals to be detained and clear grounds for detention. To this purpose the relevant legal provisions should be amended in order to avoid gaps and contradictions.²³² The Albanian national legislation should provide that the detention period is as short as possible (it is suggested that the maximum length of detention be six months in line with the latest European Commission Proposal).²³³ The detention order may be authorised by an administrative body, DBM in this case, but it should be regularly reviewed by the court. Regarding return and removal, the current legislation is quite confused as it is not clearly distinguished between these two steps.

In issuing a return decision, an appropriate period of voluntary return should be generally provided and grounds and procedures for return and removal should be transparent and clearly laid down in the legislation. Specific attention and specific measures should be foreseen with regard to children.²³⁴ The Albanian legislation should be amended also in order to clearly envisage the right and the procedures to be followed for the appeal (against the return order and the detention order). The detention period should cease when conditions for removal no longer exist, and the individual concerned should be released. In this case, certain post-detention measures (i.e. a tolerated regime) should be envisaged.²³⁵ The deficiencies of the current Albanian legal basis should be addressed before the coming into force of the third country clause of the RA in order to avoid a situation of legal vacuum or contradictory legislation.

Human-Material Component

The current legal basis for the future functioning of the centre²³⁶ is fragmented and not comprehensive. The human and material needs of the migrants accommodated in the centre (i.e. food, hygiene, communication with the outside, medical care, legal assistance, translation, education, security/safety, etc.) should be applied in compliance with the recommendations set at the European and international level, which qualify in detail how to provide these services by ensuring human rights and human dignity. Special attention should be paid to the special needs of children²³⁷ and other vulnerable categories, for which the possibility of alternatives to detention should be prioritised.²³⁸ An aspect of particular relevance in the running of the centre is the selection and training of the staff.

²³¹ Currently, there is not any specific Legal Act, which envisages the overall creation of the centre. Sporadic references are found in the Law on Foreigners, which mentions "measures for forceful accompaniment in the transit place for foreigners" and the Law on Border Guard and Control (Articles 4 and 5), but there is no legal definition of what "forceful accompaniment" is, and no further explanation of "transit place".

²³² Article 75 of the Law on Foreigners should be redrafted in order to envisage detention and specify the grounds.

²³³ Article 14(2), (3) and (4) Commission Proposal for a Return Directive.

²³⁴ The best interest of the child as envisaged also by the CRC should be taken into consideration. Unaccompanied minors should be availed a specific regime in case of return/removal. See Section on return and removal under the Legal Component.

²³⁵ See section on post-detention measures.

²³⁶ Decision No. 46, date 07.02.2002, *On the functioning of the reception centres and temporary treatment of the foreigners who are not asylum seekers*.

²³⁷ It is strongly recommended that unaccompanied children should not be accommodated in such a centre.

²³⁸ For more information see section on Vulnerable Categories under the Human-Material Component.

The centre should function based on the provisions of an internal regulation, and a system should be established to lodge complaints and undertake monitoring activities. A list of material resources needed for the creation of the centre and for the daily running of the centre has been provided; however this list, as well as the approximate estimation of related costs, represents only an indication of costs, and further analysis should be conducted.²³⁹

The comparison between the existing Albania National Regulation on the functioning of the centre and the international recommendations and the practices of other countries shows all its limits and inconsistencies. It is recommended to amend and to redraft the legal framework for the establishment of the centre in order to fill existing gaps and to make the current legal basis more complete and less fragmented. Such revision should ensure compliance with the EU *acquis* and international principles in the field, in particular with human rights standards, to which Albania is already bound.

Geographical Component

The location that best fits the relevant criteria for the creation of a centre of this type has been identified in Kareci, which is located in Durres district, 20 km from downtown Tirana.²⁴⁰ This location is far from the urban area, easily accessible and close to hospital and fire departments. Moreover, detailed TORs for the work of the Design Company have been elaborated, based on EU and international standards available and the best practices of the countries visited, carefully adapted to the specific needs and features of the Albanian context. In particular, within the TORs it has been highlighted that, in line with international and European standards, persons detained pending removal should be accommodated in facilities specifically designated for that purpose, differing from a prison-like environment.²⁴¹ Two principle elements of equal importance should guide the plan of a centre of this type: the safety and security of residents and staff on one hand, and the resident's human rights and dignity on the other. It is suggested that the centre be subject, in principle, to an "open regime" in which the individuals are free to move around. At the same time, it should be possible for different departments to be closed, to enable the Government to decide if in practice a more restrictive regime is needed once the centre is operational. The principle of separation of living departments according to the different groups of migrants (i.e. men, women and families) allow freedom of movement and a variety of activities for the residents in their own department (as common recreational rooms are foreseen). The different sections have been drawn in order to carefully consider residents' human and material needs (i.e. right to communicate with the outside, to receive visits, to obtain legal assistance, to health care, to recreation, etc.), specific conditions of disabled people and vulnerable categories and the different functions of the centre.²⁴²

General final considerations

The assessment has provided a kind of gap analysis, even though not all the topics could be fully covered, and recommendations have also been given to improve the existing shortcomings. The timeframe in which these issues should be addressed goes beyond the scope of this assessment. Due to the current re-structuring of the institutional structures and immigration legislation in Albania,

²³⁹ The experience of the existing centres in Albania has also been an important indicator in particular with regard to envisioning possible costs and practical implications.

²⁴⁰ This site is under the Ministry of Defence's ownership and the process of transferral of administrative use to Ministry of Interior is currently ongoing.

²⁴¹ Commission Proposal for a Return Directive, Article 15, par. 2.

²⁴² Refer to Annex 2 for a further specification of different sections and departments of the centre.

and also due to the evolving nature of the EU *acquis*, the current analysis should not be considered as final or complete, but as a continuous process, which needs to be developed (in particular with regard to certain issues, i.e. execution of expulsion, financial aspects, etc.). It is suggested that further analysis of certain issues and the possible establishment of working groups that may work to propose institutional and legal reform is necessary. Particular attention should be paid to budgetary and staff issues once the centre has been established in order to ensure full and proper compliance with the recommendations provided.

Institutional and legal aspects in Belgium, Hungary, and the Netherlands

These three tables outline some of the institutional and legal aspects analyzed. They do not provide a systematic and comprehensive picture of the situation in the countries.²⁴³

BELGIUM					
Institutional aspects					
Legal basis	Institutions involved	Scope of the centre	Alternatives to detention	Post-detention measures	AVR programmes
<p>Immigration Act of 15.12.1960 and its executive Royal Decree of 06.10.1991 and Royal Decree of 02.08.2002</p>	<p><i>Office des Étrangers</i>, under the authority of the Ministry for Home Affairs. As from 01-01-1994 it is separated from State Security and Justice and integrate as a Directorate General in the Ministry (now Federal Office) for Home Affairs.</p> <p>The institution responsible for forced return is, under the responsibility of the Ministry of Interior, the Immigration Office, in Brussels and in the provinces. A special Unit within the Airport Division of the Federal Police carries out all forced removals, with or without an escort.²⁴⁴</p>	<p>In Belgium, the main scope of closed reception centre is detention pending removal (i.e. for irregular migrants, rejected asylum seekers, etc.).</p>	<p>In the Belgium experiences the standards of detention is high (in terms of material and human resources provided and freedom of movement within the centre). However, all of them show a closed regime, without alternative solutions to detention.</p>	<p>Detention is ceased when the conditions for detention no longer exist (i.e. it is impossible to identify the individual or acquire the relevant document for removal). The individual is released and removed is executed once the conditions will be appropriate. No specific post-detention measures are foreseen.</p>	<p>The legal basis for AVR programmes can be found in the law governing the public Centre of Social Assistance (<i>Le Centre organique des centres publiques pour l'aide sociale</i> - CPAS) of 5 July 1976. The categories of migrants assisted through the AVR programmes are:</p> <ul style="list-style-type: none"> • Asylum Seekers who have withdrawn their application or whose application has been rejected; • Third Country nationals, who receive or may fall under the assistance of the government and wish to return to their own country or emigrate to another country that has granted them an entry visa.²⁴⁵ <p>The irregular migrants are given the chance to voluntary return at any stage of the return process, even when they are treated in the closed reception centres.</p>

²⁴³ This is the reason why the description of the different issue may sometimes appear fragmented.

²⁴⁴ Return Migration policies and practices in Europe. IOM, p. 42. See pages 42-43-44 of the same book for the operational steps undertaken in case of Involuntary Return.

²⁴⁵ Return Migration policies and practices in Europe. IOM, p. 46.



Legal aspects

Detention	Length of detention	Return/removal	Re-entry ban	Judicial remedies
<p>Temporary custody in closed centres can be applied to:</p> <ul style="list-style-type: none"> - Aliens withheld at the border and refused access to the territory on the basis of article 3 of the Schengen Act (undocumented or insufficiently documented aliens, insufficient funds, threat to public order or national security, etc.) are sent at the facility located at the borders (where they usually stay 36-48 hours) in case they can not be immediately returned by the carriers). - Aliens apprehended in-country in a situation of illegal sojourn or that pose a threat to public order/national security or are working without a permit can be given an order to leave the country (they can leave on their own within a certain period) or they can be physically removed, which can necessitate detention pending removal. (Articles 7). - Aliens who did not comply with a removal order (art. 27). 	<p>The initial detention decision is valid for a maximum of 60 days. This can be extended with another maximum of 60 days if the possibility of an effective removal is established. Any further extension of the detention can only be decided by the Minister for Home Affairs himself</p> <p>under certain conditions and after agreement of the District Court.</p> <p>Those further extensions are valid for 30 days. There can be consecutive extensions of this type but the absolute limit is 240 days in total.</p> <p>Situation is different if the returnee refuses his physical removal: in this case he is "re-detained" and this is considered to be a new detention, not an extension of the existing detention decision.</p>	<p>The return decision notifies the alien that he has to leave the territory within a clearly defined delay and also the legal and factual motives for the decision. It is up to the alien to make arrangements and make the necessary arrangements for departure.</p> <p>Grounds for removal:</p> <ol style="list-style-type: none"> 1. The alien is/remains on the territory without the appropriate documents (ID Card, Passport, visa). 2. The alien is/remains on the territory longer than the duration allowed by his/her visa. 3. His conduct/presence endangers Public Order or National Security. 4. When the Minister for Home Affairs, based on the unanimous advice of the Advisory Committee for Aliens considers his presence or activities as being harmful for the international relations of Belgium or any other Schengen Partnering State. 5. When the alien is listed in the SIS system to be removed (Article 95). 6. When he is not able to sustain himself. 7. When he is afflicted by any disease or infirmity mentioned in the Immigration Act as a ground for removal (WHO based list). 8. When he is performing any kind of lucrative activity without the necessary permit. 9. When being forcibly removed by the Dutch or Luxembourg authorities in accordance to the Benelux agreement. 10. When he is in the process of being handed over to a State with which Belgium has a readmission agreement (Dublin agreement or readmission agreement with other states). 	<p>Re-entry ban can be enforced against an alien in case he has attained to the public order or to the national security or in case he did not respect the provisions of the Schengen Act. The ban imposed should be exclusively grounded on the personal behavior of the foreigner and it cannot be based on the fact that he has exercised according to the law of free opinion, association or assembly (Art 20 Law on Foreigners). Articles 21 of the same Law establish which are the exceptions to the above provision (i.e. the re-entry ban cannot be applied to the migrant who has been recognized as refugee status, to the foreigner who has been leaving in Belgium since he was 12 years, etc.). The re-entry ban can be for a maximum period of 10 years, within which it can be suspended.</p>	<p>Any alien detained in a closed centre can lodge an appeal against the detention order. The Court has to decide within 5 days about the appeal. The appeal decision is taken within a specific 5 days and the detainee has to be released if the court decides to release the detainee and there is no appeal against that decision by the District Prosecutor (on the notification of the Immigration Service) the detainee is immediately released.</p> <p>The appeal and decision do not affect the removal decision. This means that the detainee can actually be physically removed before the Court renders its decision. If the District Court decides to release the detainee and the Prosecutor appeals against that decision, the individual will remain in custody. In this stage he cannot be removed before this (higher) appeal is dealt with by the Court of Appeal. The Court of Appeal has to decide within 15 days. If it does not render judgement within this delay, the detainee has to be released.</p> <p>The detainee can appeal to the District Court every 30 days.</p>

THE NETHERLANDS

Institutional aspects

Legal basis	Institutions involved	Scope of the centre	Alternatives to detention	Post-detention measures	AVR programmes
<p>Aliens Act 2000 governing the admission and expulsion of non-nationals) that came into force in April 2001.</p>	<p>The main source of migration policy in the Netherlands is the Ministry of Justice (MoJ). The Immigration and Naturalization Services (INS) and the Central Reception Organization for asylum seekers (COA) are the executive governmental agencies under the responsibility of MoJ. The Royal Netherlands Military Constabulary (Kmar) and the Aliens Police (part of Immigration Service) enforce expulsions in close cooperation with the INS concerned municipalities, the Aliens Chambers and the Council of State. The Immigration Service is part of the Police force and is under the responsibility of the Ministry of Interior and Kingdom Relations, although it implements the policy drafted by the MoJ.²⁴⁶</p>	<p>A distinction must be made between custodial measures aimed at combating illegal arrivals (Article 7 of the Aliens Act) and those, which serve to secure expulsion (the measures of Article 18a and 26 of the Aliens Act). The measure of article 7a of the Aliens has a specific 'border control' character.²⁴⁷ The custodial measure of Article 18a of the Aliens Act also comes under the prejudgment measures. This measure does not involve depriving people of their liberty, but limits the freedom of movement of asylum seekers staying at and investigation centre (IC).</p>	<p>Currently, the regime of restricted community is in place, in which the detainees are enabled to participate in activities communally. Two other regimes have been currently taken in consideration: the regime of general community, where the detainees are kept together in living and work areas or participate communally in activities and an individual regime, where detainees mostly remain in the designated living area. The aliens that have been deprived of their liberty by virtue of articles 7a and 18b of the Aliens Act are subjected to a different, less stringent regime (i.e. less strict telephone and visiting arrangements, more freedom of movement within the institute, etc.).²⁴⁸</p>	<p>In the Netherlands, the police commissioner will repeal the custodial order as soon as the grounds for issuing it are no longer present (Article 85 Aliens Resolution). This means that the order will be repealed if it is no longer possible to continue remanding the alien in the interest of public peace, public order or national security, if there are no further obstacles to expulsion from the Netherlands, if there is no reasonable chance that the expulsion can take place in the foreseeable future, if the alien no longer belongs to one of the categories of persons that can be remanded in custody or if the alien states his intention to leave the Netherlands and is able to do so.²⁴⁹</p>	<p>Repatriation assisted is available to asylum applicants with pending cases; those in possession of a temporary residence permit, or rejected asylum seekers who no longer have recourse to the courts and illegal migrants of all nationalities who wish to return to their countries of origin but do not have the financial means and not have deportation orders pending against them.²⁴⁸</p>

²⁴⁶ Return Migration policies and practices in Europe, IOM, p. 257

²⁴⁷ Lower House of the States General, Parliamentary year 1998-1999 - 26 338, Alien remand, No. 1.

²⁴⁸ *Ibid*

²⁴⁹ *Ibid*

²⁵⁰ Return Migration policies and practices in Europe, IOM, p. 264.



Legal aspects

Detention	Length of detention	Return/removal	Re-entry ban	Judicial remedies
<p>Art. 26 of the Aliens Act includes a list of cases and grounds on which an alien can be placed in custody such as:</p> <ol style="list-style-type: none"> 1. If their deportation has been ordered; 2. If there are compelling reasons to suppose that their deportation will be ordered; 3. If the alien has been denied the right to remain in the Netherlands pursuant to Articles 8-10 of the Aliens Act pending the decision on whether an application for a residential permit is to be granted; 6. Deprivation of liberty can be done also with a view to expulsion if this is necessary in the interests of public policy. 	<p>The Dutch Aliens Act sets no legal maximum detention period. This does not mean however that the duration of detention pending removal is unlimited.</p> <p>In general, detention is lifted after six months. In some cases however, for instance when the alien concerned has a criminal record or when he refuses to cooperate on his removal, detention can last longer. In rare cases, detention can last 12 to 13 months.</p>	<p>In the Dutch Aliens Act persons who no longer have the right of abode in the Netherlands are required to leave the country of their own volition, usually within four weeks after the period of lawful residence has ended, or immediately if their residence was unlawful. Failure to return within this specified period invokes the probability of expulsion by the Ministry of Justice, although voluntary return is preferred and cooperation to this effect is often encouraged.²⁵¹</p>	<p>Re-entry ban</p>	<p>Alien who deprived of his liberty has the right of appeal before a Court. If he has been in detention for a period of 28 days the Minister of Justice will notify the Court of the detention of the alien. Within 42 days the Court will hear the alien. The Court will judge if the alien has lawfully been deprived of his liberty. After 6 months the Court will assess the continuation of the detention with explicit scrutiny. An important element taken in consideration when determining whether or not the alien should be set free is the measure of cooperation by the alien in question. In essence the measure of cooperation by the alien determines to a large extent the duration of the detention.</p>

²⁵¹ Return Migration policies and practices in Europe, IOM, p. 263.

HUNGARY

Institutional aspects

Legal basis	Institutions involved	Scope of the centre	Alternatives to detention	Post-detention measures	AVR programmes
<p>Act on Entry and Stay of Foreigners (Aliens Act) adopted by the Hungarian Parliament in 2007²⁶.</p>	<p>The two main entities responsible for migration issues are the Border Guard (BG) and the Office for Immigration and Nationality (OIN). Both entities are dependent on the Minister of Interior and independent of one another. The Border Guard works as alien policing authority and also as an investigation authority and it deals with violation or regulations related to border areas and border crossing points.</p> <p>The OIN is responsible for immigration and Nationality is the government agency responsible for making decisions and carrying out tasks related to detention and expulsion for running the community centre, which is an open centre.</p>	<p>The main scope of the reception centres is detention for non-admissibility into the territory of the State (<i>detention for refusal</i>) and detention in preparation for expulsion. In cases of <i>Detention in preparation for expulsion</i>, the regional immigration authority has the power to detain the foreign national in order to secure the conclusion of any pending proceeding, if the identity of the migrant is not clear.</p> <p>In order to carry out the return procedure, the Border Guard shall order the foreign national to remain in a designated place of the frontier zone or the airport during the day of his arrival by air, water, railway or road, or on the means of transport that is scheduled to depart, or to transfer onto another means of transport of the carrier that is liable to provide return transport for the person in question.</p> <p>If the return procedure cannot be carried out forthwith, the foreign national in question shall remain in a designated place of the frontier zone if arriving by water, railway or road transport for maximum forty-eight hours, or in a designated place of the airport for maximum eight days if arriving by air transport.</p> <p>When the foreigners cannot be returned within the period specified under paragraph (2), the rule governing expulsion for aliens policing purposes (Article 48) shall be applicable to the foreigners.</p>	<p>In Hungary, the compulsory place of confinement is designated at a community shelter, if the foreign national is not able to support himself, and has no adequate place of abode, financial resources, income, or sponsor or relative who can be compelled to provide support. The costs of confinement in a community shelter is usually borne by the foreign national, unless the is issued a residence permit (community shelter fee); only whether or repeatedly has seriously or repeatedly violated the codes of conduct of the place of compulsory confinement, or has failed to report as instructed, the immigration authorities may order the detention of the person.</p>	<p>The law does not specify which are the measures post detention but it states that (Article 48a and Article 53): (1) "Detention shall be terminated immediately when the grounds for detention therefore no longer exist". Art 46 (8) foresees for the post-detention period the possibility of compulsory confinement, saying that "detention shall be terminated if all criteria for expulsion are satisfied, or if cannot be executed. The national immigration authority ordering the detention shall specify the place of compulsory confinement where the person in question is required to remain.</p>	<p>Art. 32 (3) of the Aliens Act of 2001 states that "the alien control may refrain from ordering the expulsion of a foreign national or the restriction of entry and stay, if the person in question agrees to leave the country voluntarily". By choosing Voluntary Return those foreigners with sufficient means and resources could leave the country by themselves. Those needing assistance for document processing, re-expulsion, appeal and other administrative tasks, help available to them under the AVR programme (OIN assistance).</p> <p>In practice, beneficiaries of the AVR programme include the following three categories of persons:</p> <ul style="list-style-type: none"> -rejected asylum seekers -asylum seekers who have renounced their pursuit of refugee status - other foreigners who were obliged by the competent alien police authorities to leave the territory of the country as a consequence of violating the law of foreigners' entry and staying in Hungary or against which the conditions of ordering such obligation exist.²⁶

Legal aspects

Detention	Length of detention	Return/removal	Re-entry ban	Judicial remedies
Refer to section above on scope of the centre.	Detention ordered by the immigration authority shall be limited to five days; it may be extended until leaving the country by the local court competent according to the place of detention. If the period of detention ordered by the immigration authority exceeds thirty days, whether continued detention is facilitated shall be reviewed by the court on a monthly basis. The county court where the place of detention is located shall have exclusive jurisdiction to extend the duration of detention ordered by the immigration authority for a period of over six months, and it shall review whether continued detention is facilitated at ninety day intervals. The duration of detention ordered by the immigration authority may last until the conditions for the execution of expulsion are established, or for no more than twelve months. The number of days of continued detention shall not exceed the maximum six months if ordered in conjunction with a misdemeanour offence.			A decision ordering the detention of a foreign national cannot be appealed, but the law foresees some mechanism for reviewing the detention order (see sections 49-50-51).

²⁸² Government decree "Concerning order within the jails of the immigration police, of the security requirements of undertaking detention, of certain health requirements of detention" Jan. 30, 2003.
²⁸³ Return Migration policies and practices in Europe, IOM, p. 178.

The specifications of spaces for the closed reception centre for irregular migrants in Albania

The general layout of the centre was provided to the design company in the TORs (Annex a) and was drawn in accordance with the findings of the other components of the assessment, in particular the Human-Material Component. The main aspects of this layout, which highlights all the sections to be included in the centre with the relative functions, the interconnections between them, and the security aspects to be taken in consideration, are the following:

a) An entrance/reception section for residents that leads to the reception section for residents and that includes:

- *An incoming zone* (where the residents enter the building and shall be provided with detector system and security/double doors and with other security equipments);
- *Entrance security office* (in order to screen the residents in the intake phase and to monitor all the residents' movement into and from the centre);
- *Waiting rooms for residents* for the time needed before and during the registration;
- *Screening room* in which the identification and the body check of the resident can be undertaken, together with the impounding of forbidden objects;
- *Registration room* where other formalities related to the intake phase are undertaken (i.e. registration, distribution of information package, toiletries package, bed linen, etc.); residents could also be provided with toiletries package and bed linen in this room. Close to the registration room *showers and toilets*²⁵⁴ for the residents should be foreseen, where they could have a shower before the medical check up.
- *Storage room* in which the residents' personal belongings can be registered and stored in locked safes located there, until the residents leave the centre;
- *Health unit* (consisting of three connected areas) where emergency and routine medical treatment can take place. The facility should be separated into *two/three areas* (one office and two rooms²⁵⁵ for visits and medical treatment) in order to allow for the storage of medical supply and reports, and for the treatment of the residents. This unit should be also connected with the reception area for residents, as a medical check-up and a definition of special dietary needs have to be undertaken in phase of reception, while before the departure another visit should be undertaken to verify the travel fitness. The health unit should be accessible from the common area of the facility and should have easy access to an exit from the building in the case that the individual needs to be transferred to a hospital or another medical facility.

b) An entrance/reception area for visitors/staff that includes:

- *Incoming zone for visitors*, where the visitors enter the building, mainly during working hours equipped with detector system;
- *Incoming zone for staff* where the visitors enter the building with the detector system;
- *Entrance security office*, where visitors' belongings can be checked and screened before entering into the visiting area and from where the staff's movement are monitored;
- *Visit room* for the visit between family members and residents;
- *Individual interview rooms* for individual interviews and meetings between the residents and special contacts (i.e. lawyers, NGOs, IGOs, Consular officials, etc.);

²⁵⁴ This area should be easily seen from the security post.

²⁵⁵ The two rooms could be used in case men and women need treatment at the same time.

- *Incoming zone for supplies and materials;*

Within this area also the **Security Hub** is located. This is a security space where all the security systems are centralised and controlled (evacuation and detection fire system, the closed circuit cameras, control of all the security doors, etc.). The security hub needs to be technically connected (IT connection) with the central security office. The security hub is also connected with the entrance security office for residents, the central security office which is located at the crossing point of the living/dormitory departments and with the security team posts per department.

All the above security areas should be interconnected (IT connection and when it is possible logistical connection). All the security areas should have one glass (reinforced) panel to monitor the incoming zones and the other sections (i.e. common sections, living/dormitory departments, etc.). The security areas per se should only be accessible by staff and not by visitors and residents. The security areas will be equipped with computers, CCTV and other relevant monitoring equipment. It is advisable that these areas be connected directly to the generator and the server room. These areas should be possibly operated 24 hrs a day by the staff.

The centre design should also adequately meet international and European standards in fire safety, and each department (see below) should have at least one emergency and one fire exit. The use of detection and evacuation instruments in the case of fire must be included.

c) An administrative section

Approximately 30 staff members (1 per 5 residents)²⁵⁶ may be employed at the centre at any one time, hence adequate facilities should be envisioned. The running of the centre will be undertaken on site, so at least six rooms should be foreseen for the director of the facility, the financial staff, support services (used also for photocopying), social workers, security staff and a common room for all the staff (with sink and tea/coffee machines). The administrative section should also include a meeting/training room provided with the needed equipment (projector, keyboard, etc.) for the staff, external visitors and other needs of the centre. Moreover, a *storage room* (also for cleaning equipment) will be necessary here and *toilets* for the staff are needed in this area.

Lesser security requirements could be envisaged for this section within this section (exception made for the doors that connect this section with other sections of the building, i.e. common area, reception area, etc.).

d) A common section

The common section is to be used by all three categories of individuals in the centre – men, women and families and be directly accessible from all the living/dormitory sections. It is technically possible that the common area be locked at night, ensuring monitoring from the central security office. It is also technically possible for the residents to access the different areas of this section directly from the living/dormitory departments.

In particular the Common Section includes:

- Central Security office.
- Space for the holding of light arms for the protection of staff and residents.
- Kitchen/Canteen divided from one another but should be connected. Both facilities should be designed for approximately 50 individuals eating (on a rotation basis) for a maximum of three meals a day. Space for staff eating here should be also envisaged.

²⁵⁶ This figure may also be subject to revision based on future needs.

- Storage room and garbage room/Laundry room for staff.
- Library for residents which is accessible to all residents, and should have adequate space for shelves and tables, to be equipped with books in different languages.

e) Living/Dormitory quarters

The living/dormitory sections are divided into separate areas: the security area, the isolation department, the female department, two male departments and the family department. Categories do not have access to each other's departments either day or night. At the centre of the living/dormitory area, there is a central security office, which has direct access and view into each department. The central security office has direct access (i.e. doorway) into each department. Each department also includes a small "security team post" (an observation point for the security staff night and day).

In particular the Living/Dormitory section includes:

- *Team posts (one per department);*
- *Recreational rooms (one per department – excluding the isolation department).* In each recreational area there should be a TV, chairs and tables, and space for a table tennis and table games area (this room could be big enough to allow the division into two smaller areas to use for different recreational activities);
- *Prayer rooms (one per department – excluding the isolation department).* This area should be adaptable for each of the main recognised religious faiths according to need;
- *Laundry rooms (one per department – excluding the isolation department);*
- *Storage rooms²⁵⁷/Waste depositories;*
- *A recreation room for children and a small kitchen are foreseen in the family departments.*

f) An isolation department

Within the direct visibility and access of the central security office, and separate from the other departments, four special isolation rooms, in which individual residents can be held for short periods of time, are foreseen. As with the other department rooms there should also be toilets and sink (inside the room) with direct access to showers located outside.

e) Other spaces

Adequate attention should be given to ensuring that the sizes and spaces envisioned in the centre enable the working of the centre for up to 48 hours independently of water, food and energy supplies. Other spaces should be foreseen to accommodate the following services:

- Generator(s) of sufficient size to power the whole of the facility during electricity shortages;
- Water tank to supply the centre in emergencies for up to 48 hrs;
- Storage space for all comestibles, durables, etc. for the running of the centre;
- Heating and Cooling system;
- Server room for the computer/ IT.

g) An outdoor recreational space

An outdoor space is foreseen (within a system of fences and gates) where a playground for children and sports grounds (volleyball, basketball, etc) are located. The spaces are divided according to the individual departments. In addition to this, the outdoor space also includes a parking area, the space necessary for vehicles to drive the residents to and from the centre (connected with the reception) and the space for other vehicles to come into the centre for delivering the needed supplies. Separate parking space for visitors is possible outside of the perimeter fences.

²⁵⁷ For the basic living requirements of the residents including blankets, toiletries, etc. and for the cleaning equipment.

I. Legal instruments of reference (EU and International level) and summary of major issues of concern and recommendations

Particularly relevant

- 2004 Council of Europe *Twenty Guidelines on Forced Return* adopted by the ad hoc Committee of experts on the legal aspects of territorial asylum, refugees and stateless persons (CAHAR) on 4 March 2004 ("COE Guidelines") http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/asylum_refugees_and_stateless_persons/texts_and_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf.
- 2005 Proposal for a Directive of the European Parliament and of the Council *On common standards and procedures in Member States for returning illegally staying third country nationals*, COM(2005) 391 final 2005/0167 (COD), binding for EU Member States ("Commission Proposal for a Return Directive"), http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0391en01.pdf.

International Human Rights Treaties relevant to the handling of irregular migrants

- 1950 European Convention on Human Rights (ECHR)-*Ratified by Albania on 2 October 1996*. <http://www.hri.org/docs/ECHR50.html>.
- 1951 Convention relating to the Status of Refugees ("UN Refugee Convention") and the New York Protocol of 1967-*Acceded by Albania on 18 August 1992*.
- 1963 UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)-*Acceded by Albania on 11 May 1994*.
- 1966 International Covenant on Civil and Political Rights (ICCPR) and the relative First Protocol of 1976)-*Acceded by Albania on 4 October 1991. Neither the first or second protocols have been ratified*, http://www.unhcr.ch/html/menu3/b/a_ccpr.html.
- 1966 International Covenant on Economic, Social and Cultural Rights of 1966/1976 (ICESCR)-*Acceded by Albania on 4 October 1991*, http://www.unhcr.ch/html/menu3/b/a_cescr.html.
- 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)-*Acceded by Albania on 11 May 1994*, <http://www.unhcr.ch/html/menu3/b/e1cedaw.html>.
- 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)-*Acceded by Albania on 11 May 1994*, http://www.unhcr.ch/html/menu3/b/h_cat39.html.
- 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-*Ratified by Albania on 2 October 1996*.
- 1989 UN Convention on the Rights of the Child of 1989/1990 (CRC)-*Ratified by Albania on 27 Feb 1992 (but not the relative protocol)*, <http://www.ohchr.org/english/law/pdf/crc.pdf>.
- 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)-*Not ratified by Albania*, <http://www.ohchr.org/english/law/cmw.html>.

Non-binding principles relevant to the handling and temporary custody of irregular migrants

- 1948 Universal Declaration of Human Rights (UDHR)-Although non-binding, many of the rights set forth by the Declaration have obtained the status of norms of customary law.
- 1955 UN Standard Minimum Rules for the Treatment of Prisoners ("UN Standard Minimum Rules"), http://www.unhcr.ch/html/menu3/b/h_comp34.html.
- 1987 COE European Prison Rules.
- 1990 UN Body of Principles for the Protection of All Persons under Any Form of Detention or

- Imprisonment ("UN Body of Principles"), http://www.unhcr.ch/html/menu3/b/h_comp36.html.
- 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (JDL).
- 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers ("UNHCR Revised Guidelines").
- 2002 The CPT Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("The CPT Standards").

II. Table on the sources of reference for the basic human rights relevant in the Handling and Reception of irregular migrants

Core rights applicable to all human beings	International Human Rights Legislation
• Right to life.	UDHR ²⁵⁸ 2; ICCPR 6 (1); ECHR 2
• Prohibition against torture and other inhuman and degrading treatment.	UDHR 3, 4, 5; ECHR 3; 15 (2) ICCPR 7; 8 CAT 2, 4, 12
• Prohibition against slavery or servitude.	UDHR 4; ICCPR 8
• Prohibition against a prolonged arbitrary arrest.	UDHR 9; ECHR 5; ICCPR 9
• Freedom of thought, conscience and religion.	UDHR 9 (1); ICCPR 18
• Prohibition against retroactive penal measures.	UDHR 11; ECHR 7
• Right to a due process.	UDHR 8; ICCPR 14; ECHR 6
• Right to human treatment as a detainee.	ICCPR 10
• Right to equality before the law.	UDHR 6; ICCPR 26
• Right to leave any country and to return to one's country. ²⁵⁹	UDHR 13 (2); ICCPR 12
• Principle of non-refoulement. ²⁶⁰	1 st Geneva Convention 1; UN Refugee Convention 33; CAT 3
Basic principles underlining specific rights	
Principle of proportionality Any measure of a public authority that affects a human right must be appropriate and necessary in order to achieve the objective, which is intended, and reasonable. This principle is a safeguard against unlimited use of legislative and administrative powers.	ECHR 5; ICCPR 9 (1)
Freedom of Movement Freedom of movement is granted not only to citizens of EU Member States, but may be granted to "nationals of third countries legally resident in the territory of a Member State", too. National legislation determines who is considered to be "legally" residing.	ECHR 5; ICCPR 9; UDHR 3
Non-discrimination The enjoyment of certain rights shall not be subjected to discrimination of any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Persons are equal before the law and are entitled without any discrimination to the equal protection from the law. For some rights the principle of discrimination is absolute (core rights, see above) and for others it is possible to discriminate (e.g. on the ground of citizenship).	ICCPR 2 (1); 26; UDHR 2; 14; CERD 5

²⁵⁸ The UDHR has no binding effect, although many of the rights set forth by this Declaration have obtained the status of norms of customary law.

²⁵⁹ The right actually is not absolute. States may prevent departure to enforce criminal sanctions, the payment of taxes, military services requirements and attendance at legal proceedings. Furthermore the right to leave is an incomplete right, because to this right does not correspond the relative right to freely enter in any state, except, perhaps, through unauthorized means. This problem is particularly relevant for refugees and asylum seekers.

²⁶⁰ In case of reasonable reasons to believe that a person removed will be subject to torture, the application of the principle of non-refoulement is absolute.

III. Major areas of concern in the establishment and running of a closed reception centre for irregular migrants

	MAIN SOURCES	
Issues	Commission proposal for a Return Directive; COE Guidelines on Forced Return; Other non-binding instruments.	Main binding Instruments
General aspects of Temporary custody		
Temporary custody should be always considered as the last resort, if it is necessary to prevent the risk of absconding and if the use of less coercive measures is not sufficient. It should be executed in accordance with law and bound to the principle of proportionality.	Commission Proposal for a Return Directive, 14; COE Guidelines 6 (1); UN Body of principles 2.	ECHR 5; ICCPR 9 (1); CRC 37 (b).
Procedural guarantees. Upon temporary custody the individual should be entitled to procedural guarantees (i.e. right to be informed of the reasons of custody and his/her rights in connection, in a language and terms understandable to him/her; right to complaint against the lawfulness of temporary custody, etc).	COE Guidelines 6 (2); UN Body of principles 14; UN Standards Minimum Rules.	ICCPR 4, 9 (2) (4), 14; ECHR 4, 5 (2) (4); CRC 37 (d).
End of custody. Temporary custody should be ceased when the grounds for detention no longer exist, if the arrangements for removal are not in progress or executed with due diligence or if the removal cannot be executed in the maximum length foreseen by law.	Commission Proposal for a Return Directive, 14 (2), (3), (4); COE Guidelines 7.	ECHR 5 (1); ICCPR 9 (1).
Length of temporary custody. Any detention pending removal shall be for as short a period as possible (maximum 6 months). In any case, the need to detain an individual shall be reviewed at reasonable intervals of time by judicial authorities.	COE Guidelines 8.	ECHR 5 (1); ICCPR 9 (1).
Judicial remedy. Each migrant should be granted the right to appeal against the temporary custody decision. The lawfulness of his/her temporary custody shall be decided speedily by a court and subject to appeal. If the temporary custody is not lawful the individual concerned should be released. This remedy shall be readily accessible.	COE Guidelines 5, 9; UN Body of principles 11.	ICCPR 9 (3); ECHR 5 (3).
Alternatives to detention. The application of less coercive measures (i.e. regular reporting to the authorities; deposit of a financial guarantee; handing over of documents; obligation to stay at a designated place) should be preferred over detention. Alternatives to detention should be considered based on individual circumstance before resorting to detention, as these are more humane and more cost effective.	COE Guidelines 6.1; Commission Proposal for a Return Directive 14(1); UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.	
Voluntary return. Priority should be given to voluntary return and it should be actively promoted, as it is preferred to forced returns, both in terms of humanity, cost effectiveness and sustainability. All individuals should be generally given the possibility to remove themselves, after the return decision has been issued. Voluntary return should be offered at different stages of the return process; the third country nationals readmitted under readmission agreements should also be offered the possibility to voluntary return. Individuals who opt for voluntary return should generally not be detained.	COE Guidelines 1; Commission Proposal for a Return Directive ; Green Paper on a community return policy on illegal migrants COM (2002) 175 final.	
Categories concerned. The main group of irregular migrants being detained in closed reception centres should include foreigners who are subject to removal, who are not willing to undertake voluntary return, and whose immediate return is not possible. The temporary custody may be possible to identify the migrant, acquire travel documents, prepare the departure, etc. Closed Reception Centres for Irregular Migrants should not accommodate VoTs and Asylum Seekers.	Commission Proposal for a Return Directive; Shengen Agreement (1985) between the Governments of the States of the Benelux Economic Union, Germany and France on the gradual abolition of checks at their common borders.	

<p>Institutional aspects. The authority issuing a detention order generally should be a Court. In any case, the Court should review (within 72 hours) the order issued by an administrative body. Institutional coordination between the entities responsible for irregular migrants, asylum seekers and other categories (i.e. VoTs) is recommended. A system of referral among the above entities should be established, as links exist between the categories (i.e. irregular migrants may ask for asylum, rejected asylum seekers to be returned, etc.).</p>	<p>Commission Proposal for a Return Directive; Other State Practices.</p>	
<p>Services and rights within the centre</p>		
<p>Food, Bedding, Hygiene. Migrants under temporary custody pending removal should be provided with: - Separate bed; appropriate, clean, adequate bedding; - Food of nutritional value, that respect dietary needs; - Always-available drinking water; - Clean clothing and suitable for different climate; - Access to showers and toiletries; - Possibility to purchase small items.</p>	<p>CPT/Inf (97) 10, B.29; UN Standard Minimum Rules 15, 16, 20.</p>	<p>UDHR 25; CESCR 11.</p>
<p>Information. Migrants under temporary custody pending removal should be provided information on: - Grounds of temporary custody, - Rights and obligations (i.e. right to complaints against removal, temporary custody, ill-treatment, to contact a lawyer, a doctor, relatives, UNHCR, other NGOs, etc.); Information and informative material should be supplied in adequate and appropriate selection of languages understandable for the migrant.</p>	<p>COE Guidelines 6 (2), 10 (7); CPT/Inf (97) 10.C.30; UN Body of principles 13, 14; UN Standard Minimum Rules 35.</p>	<p>ICCPR 9, 14; ECHR 5 (4); ICCPR 14.3.</p>
<p>Communication with the outside world. Residents of the centre have the right to regular visits with family, Consular, Embassy, lawyers, NGOs, International Organisations –IOM, UNHCR, etc.- and access to the outside world through newspaper, radios, phone calls, etc.)</p>	<p>Commission proposal for a return directive 15 (1); COE Guidelines 10(5), 11; UN Body of principles 15, 16, 19; UN Standard Minimum Rules 37/39.</p>	
<p>Intake/registration phase. Upon arrival, irregular migrants should be identified; registered; subject to medical check-up, provided with information package and toiletries package, with free calls and possibility to contact person of their choice (i.e. lawyer); be subject to the examination of baggage and impounding of forbidden objects.</p>	<p>COE Guidelines 6 (2); CPT/Inf (97) 10.C.30, (92)3 44; 12th General Report of Activities of the CPT (2002).</p>	<p>ICCPR 14; CAT 6; ICRMW 28.</p>
<p>Legal assistance. Residents of the centre should be given the unrestricted assistance of a qualified, impartial legal counsel, (of their choice if possible, or assigned by the competent authority). The legal sessions should take place individually and at any time requested.</p>	<p>UN Body of principles 11, 17, 18; UN Standard Minimum Rules 93.</p>	<p>ICCPR 14 (3); ECHR 5 (4).</p>
<p>Health care. Residents should have 24-hour access to emergency medical services, and regular access to general medical treatment. The basic medical assistance should be provided within the centre; the infirmary should be accessible daily (minimum 5 hours per day) with an available doctor. Particular attention should be given to the psychological well being of residents. Special accommodation for pre-natal and post-natal care and serious diseases should be envisaged. Medical care shall be always free of charge. For specific treatment assistance should be offered in specialised institutions or hospitals.</p>	<p>UN Standards Minimum Rules 22-26; CPT/Inf (97) 10.C.31.</p>	<p>UDHR 25; CEDAW 12.</p>
<p>Religion. Residents of the centre should have the right to practice freedom of religion (through religious services; private visits with religious officials; wear specific clothing, or to follow a religious diet).</p>	<p>UN Standards Minimum Rules 6 (1), 41-42; UN Body of principles 33.</p>	<p>ICCPR 18; ECHR 9 (1).</p>
<p>Translation/transportation. The assistance of impartial and, when possible, qualified translation should be provided when needed. The interpreter should follow the legal proceedings related to detention. Assistance should be free of charge. Transportation, free of charge, should always be available (to/ from the centre, especially for emergencies).</p>	<p>COE Guidelines 10 (7); UN Body of Principles (14).</p>	

<p>Outdoor and recreational activities. Residents of the centre should exercise daily (not less than 2 hours per day) recreational and leisure activities (i.e. sports, access to library, TV, etc.). Outdoor recreation areas should be accessible to the resident within the set time frame.</p>	<p>COE Guidelines 11 (3); UN Standards Minimum Rules 6 (1); 41-42; UN Body of Principles (33).</p>	<p>ICCPR 18; ECHR 9 (1).</p>
<p>Vulnerable categories</p>		
<p>Men and women should be separated from the opposite sex if they so wish</p>	<p>COE Guidelines 10 (4); UN Standards Minimum Rules 8.</p>	
<p>Families should be provided with separate accommodation guaranteeing adequate privacy. The principle of family unity should be respected.</p>	<p>COE Guidelines 10(4), 11(2); UN Standards Minimum Rules ; CPT/Inf (93) 12,d.63.</p>	<p>ICCPR 17; ECHR 8; CRC 9.</p>
<p>Children shall only be detained as a measure of last resort and for the shortest period of time. Whether in temporary custody facilities or not, they have a right to education and to leisure, through activities appropriate to their age. The provision of education should be subject to the length of their stay and the individual circumstances. Educational activities should be carried by specialized social workers.</p>	<p>Commission Proposal for a Return Directive 15 (3); COE Guidelines 11 (3); UN Rules for the protection of juveniles deprived of their liberty 38; UN Standard Minimum Rules 8.</p>	<p>CRC 3 (1), 37; CESCR 13; CRC 28.</p>
<p>Separated children should be provided with accommodation in institutions provided with the personnel and facilities, which take into account the needs of persons of their age. The best interest of Child shall be of primary consideration.</p>	<p>COE Guidelines 11 (1) EC Communication 564 (2002) on a Community Return Policy on Illegal Residents.</p>	<p>ICCPR 10 (2); CRC 20 (1) 37.</p>
<p>Elderly, pregnant women and nursing mothers and sick persons (also mentally ill and with disabilities) should be detained only under specific circumstances and provided with a special treatment.</p>	<p>EC Communication 564 (2002) on a Community Return Policy on Illegal Residents; ICESCR General Comment No. 6 on the economic, social and cultural rights of older persons. UN Body of Principles (5).</p>	
<p>Staff issues and other aspects</p>		
<p>Staff in the center should have civilian status; <u>Permanent Staff</u> should include: management and administrative staff, medical staff, social workers; cleaning and kitchen staff, drivers; security staff, <u>Support staff</u> should include: translators; specialised medical staff, lawyers; religious officials. Gender balance within the staff should be always ensured; Staff should be carefully selected and receive appropriate training on i.e. on human rights standards; law on migration and asylum; counselling skills, first aid; interpersonal communication and stress management, security/safety, etc. Specialized agencies, NGOs and international Organisations (IOM, UNHCR, etc.) could provide some staff and deliver training.</p>	<p>Belgian Royal Decree of 02.08.2002 on the functioning of closed centres in Belgium; COE Guidelines (n.10, para.3).</p>	
<p>Regulation and standard of conduct for the staff should be available; Regulation for residents (i.e. on their rights/ obligations, disciplinary regime, complaints system, etc.) should be available; A mechanism allowing residents to submit complaints should be always in place; Periodic monitoring activities (internal/external) should be foreseen; The authorities should make available detailed information on relevant policy, practice and statistics to ensure transparency; the issue of data protection and privacy should be also taken in high consideration.</p>	<p>COE Guidelines 10 (6); UN Standards Minimum Rules (36); UN Body of Principles (33); Commission Proposal for a Return Directive (art. 15, 4); COE Guidelines on Forced Return 11 (2); CPT/Inf (97) 10,C.31.</p>	<p>ICCPR 2, 3, 17; ECHR 8, 13; CAT 13.</p>
<p>Architectural aspects</p>		
<p>General conditions. All persons deprived of their liberty "shall be treated with humanity and with respect for the inherent dignity of the human person". Care should be taken in the design of the premises to avoid, as far as possible, any impression of a "carceral" environment. Small centres (150-200 individuals) are considered easier to manage.</p>	<p>Commission proposal for a return directive, 15; COE Guideline 10 (1) (2) Body of principles 1; UN Standards Minimum Rules 1.</p>	<p>ICCPR 10 (1) (2).</p>

<p>Accommodation. Persons detained pending removal should be accommodated in facilities specifically designated for that purpose (adequately furnished, clean, in good state of repair and which offers sufficient living space). Where this is not possible, it must be ensured that foreign nationals under temporary custody are permanently physically separated from convicted criminals.</p>	<p>COE Guidelines 10 (2) (4); UN Standards Minimum Rules 8, 9-14, 19.</p>	<p>ICCPR 10 (2); ECHR 3.</p>
<p>Material resources are needed for the creation of the center (i.e. furniture; kitchen material; safes; laundry equipment; material for recreational and educational activities; books in different languages; medical equipment; telephones and other means of communication; security equipment; informative materials; cars, etc.) Material resources are needed for the daily running of the center (i.e. food; bedding, toiletries, cleaning articles; clothes; medicines, etc.). The quantity of these materials should be decided according to the capacity of the centre. A proper budget should be allocated by the state for the running of the centre; external organizations can provide some services (assistance to vulnerable categories, medical care, etc.).</p>	<p>Link to rights and needs described above; Other State practices.</p>	
<p>The aspects suggested for the architectonic design of the centre are:</p> <ul style="list-style-type: none"> - Preference for an open regime (individuals free to move around during the day as "far as possible", with exception for certain sections - i.e. administrative sections, entrance sections). - Separation of living departments according to the different categories (i.e. men, women, families). This allows residents to be free to move within their living section and it guarantees security. - Small groups in the living/dormitory departments (50 individuals), as it appears to be easier to manage. - Attention to the specific needs of each group (i.e. families section planned to include small kitchen, children recreation room, etc.) - Facilities accessible by disabled people and particular attention to other vulnerable categories; - Sections planned in order to meet residents' human/material needs; - Security and safety of residents, staff and visitors through presence of i.e. interconnected security offices, security team posts per department, appropriate technical equipment, etc. 	<p>Link to rights and needs described above; Other State practices.</p>	

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