

Report on Conference Immigration Detention in the EU

Kos, 8-10 June 2023



Diakonie 

EQUAL RIGHTS
Beyond Borders

Summary

From June 8-10, Equal Rights Beyond Borders and Diakonie Deutschland hosted the first ever conference on immigration detention on the Greek island of Kos. The conference brought together nearly 100 legal practitioners, scholars, and activists from across the EU to discuss the many different detention practices in place across Europe.

We are pleased to report that the conference was a success. Our objectives included coalition building across borders, comparing and contrasting state detention practices and best practices for advocates challenging detention, developing common and coordinated strategies, and interrogating the hypothesis that detention policies on Kos are a blueprint for the EU. We are proud to have welcomed representatives fighting immigration detention in over 15 countries.



I. Introduction

This conference grew out of a desire to gather practitioners from across Europe working on a similar issue: immigration detention. We sought to understand common challenges and build advocacy networks across the continent.

Kos was the ideal venue for the conference as it sits on one of the easternmost points of Europe's external border and is home to two distinct facilities: the Closed Controlled Access Center (CCAC) and the only remaining Pre-Removal Detention Center (PRDC) on the Greek islands. The conditions and experience of both the CCAC and PRDC are prison-like. Though asylum seekers can - for the moment - leave the CCAC during the day-time hours, they are required to return at night and their movement within the facility is highly restricted and surveilled by the authorities. This situation is further extremely volatile and subject to arbitrary decision making of the authorities. Previously, asylum seekers could only leave the CCAC for certain reasons after prior notice. In contrast, people detained in the PRDC cannot leave the facility for any reason, and are often detained for up to six months with limited access to legal aid.

When we first envisioned holding a conference on Kos, we saw it as an opportunity to shed light on the detention practices on the island, examine the ways in which they often serve as a blueprint for detention policies in Greece and the EU more broadly, and to provide a perspective from the field often missing from migration conferences. However, two developments rendered the conference timely in ways we could not have foreseen.

First, the Interim Greek Minister of Migration and Asylum, Daniel Esdras, visited the Kos CCAC on 2 June 2023, one week before our conference. In his subsequent press release, he praised the CCAC as a "jewel of Europe" and encouraged "all Europeans working in migration [to] pass through here." These statements strongly support our hypothesis that immigration containment policies on Kos are indeed a blueprint for Europe. Second, on the evening of the first day of the conference, after years of deliberation, EU Member States reached agreements on major points surrounding the New Pact on Migration and Asylum putting so-called border procedures into the center of the reform. While the precise impacts of these decisions — which will increase the use of border procedures and expand the definition of safe third countries — remain to be seen, advocates have warned that the proposals will lead to the deprivation of liberty of many more people seeking safety.

As we prepare for a shift towards, rather than away from, the criminalization and incarceration of asylum seekers in Europe, a conference examining European detention policies was imperative. As advocates, we must probe present detention policies while planning for a future where detention is even more prevalent. We believe that participants left the conference with new networks, new approaches, and a renewed commitment to critical anti-detention work. Importantly, our final conference event was a common brainstorming session during which participants discussed collaborative, cross border strategies for fighting detention.

II. Background on Immigration Detention in the EU

The conference opened on the afternoon of June 8 with a keynote speech by Professor Dr. Galina Cornelisse from Vrije Universiteit Amsterdam. With immigration detention in the EU “skyrocketing,” Dr. Cornelisse emphasised the need for an open and continuous dialogue between academia and practice.

She began her session by identifying the following trends in border control in Europe today: externalization and outsourcing practices to third countries such as Libya and Türkiye, criminalization, the instrumentalization of border crises, and de facto detention. At the same time, states continuously fail to address the root causes of migration in an increasingly unstable world.



Although, as Dr. Cornelisse noted, de facto detention is already relied on by many states such as Greece, Hungary, and Italy. However, the practice risks becoming more widespread if the New Pact is ultimately passed. In theory, there are several layers of legal frameworks that protect the right to liberty. The European Convention on Human Rights, the EU Charter of Fundamental Rights, and several UN treaties all protect a person’s fundamental right to be free. However, though state practices are increasingly looking to restrict that right, the judiciary is not always an effective tool for upholding that right because detained individuals have very little access to courts.

With respect to ways forward in court, in her keynote, Dr. Galina Cornelisse encouraged greater dialogue between judges, academics, and practitioners; creative lawyering to employ new demands to improve and ultimately end detention, such as complaints brought under the right to health; and “judicial compassion,” or judges who do not merely uphold the status quo, but challenge it with an eye towards reducing human suffering.

III. Kos as a Blueprint

The conference started with the premise that Kos is a blueprint for detention practices in the EU. We began to look at that on Thursday by diving deep into the history of detention on the island. The Kos PRDC formally opened in 2017, in the wake of the EU-Turkey Statement. Built less than a few meters from the former Reception and Identification Center, the PRDC is a highly carceral facility, surrounded by NATO-style fencing and layers of barbed wire.

From the beginning, the Kos PRDC served as a testing site for new detention practices in Greece. In 2017, the authorities introduced the “low profile scheme,” under which asylum seekers from countries with low recognition rates were detained upon arrival for the duration of their procedures.

After a change in the Greek law in 2020 the authorities began implementing a radical new policy of automatic detention upon arrival. From January 2020-mid 2021, authorities on Kos detained almost every asylum seeker upon arrival and for up to 18 months, with few exceptions made, even for families with children. Although the automatic detention scheme ended around September 2021, harsh detention policies are still the norm on Kos today. The authorities continue to detain rejected asylum seekers for six months in the PRDC, although there have been no returns to Türkiye since March 2020, and asylum seekers forced to live in the CCAC have seen their liberty severely restricted over time.



The conference included two visits: an unofficial visit for a limited number of participants to the CCAC, and a conference-sponsored visit to see the exterior of both the CCAC and PRDC for all participants.

Regarding the unofficial visit to the CCAC, Equal Rights reached out to the CCAC administration to make them aware of our conference plans. The CCAC Commander offered for a small number of conference participants to join him for a guided tour of the facility. Upon arrival to the CCAC, the Commander alerted our group that the visit would no longer be possible because the Ministry had not confirmed its approval, while it was the administration itself that suggested the visit. We believe this interaction is reflective of a greater pattern of unreliable access to the CCAC.

Regarding the conference-sponsored visit to the exterior of the CCAC and PRDC, all conference participants gathered in the common parking lot of both facilities to have a visual of the topic of our conference: immigration detention. The long bus ride to the centers reminded participants of the intentional geographical isolation of the facilities, and the barbed wire and austere structures of both the CCAC and PRDC lend credence to our theory that the CCAC may constitute de facto detention. We were not allowed inside. Equal Rights Beyond Borders Kos office attorney Sofia Dede provided an overview of the CCAC and PRDC structure.

IV. Immigration Detention Across the EU

With the aim of comparing detention practices across different Member States, our program on Friday included inputs on detention practices in the following Member States: Greece, Poland, Bulgaria, Croatia, Lithuania, Hungary, Germany, Italy, and Malta.

During the first Member State session we heard from experts from Greece, Poland, and Bulgaria. In Greece, we heard from Athina Ntavasili from Equal Rights and Elli Kriona from HIAS Greece. They both explained that both de jure and de facto detention can happen at every stage of the procedure. Other challenges highlighted were the lack of effective judicial review and individualized assessments along with the continued detention of rejected asylum seekers with no prospect of return to Türkiye.



Commenting on the situation in Poland, Marta Górczyńska of the Helsinki Foundation for Human Rights argued that Poland has among the strictest detention policies in the EU and that detention of children remains a major issue. She also discussed the situation at the Poland-Belarus border in 2021, highlighting the particularly dire conditions in the Wedrzyn Detention Center. Although lawyers had some success with interim measures before the European Court of Human Rights (ECtHR), Poland often refused implementing the decision, a theme that came up in several other Member State inputs as well.

Finally, Diana Radoslavova from the Center for Legal Aid closed the session by speaking about the situation in Bulgaria. Bulgaria, she explained, has seen a sharp increase in the number of asylum seekers arriving at its borders in the past several years, which has also led to an increased reliance on both de facto and de jure detention. In particular, she highlighted the practice of de facto detaining people in unregulated facilities as a major issue for lawyers looking to challenge arbitrary detention.



The second Member State session highlighted the detention practices in Croatia, Lithuania, and Hungary. The session picked up where the first left off: looking at how states circumvent habeus corpus rights by claiming they are implementing alternative forms of detention. Sara Kekus from the Center for Peace Studies in Croatia talked about how Croatia uses terms like “transit centers” to avoid labeling a practice as detention. Among the challenges she also discussed was the use of arbitrary detention, lack of access to counsel and lack of interpretation. From there, Justė Remytė from the Lithuanian Red Cross explained that the use of immigration detention in Lithuania is a fairly new phenomenon, after the government introduced a state of emergency law in 2021. Under that legal framework, people arriving irregularly were denied access to the asylum procedure and subject to automatic detention, in many cases without a detention order or access to a judicial remedy. Finally, Gruša Matevžič from the Hungarian Helsinki Committee closed the session by providing an overview of the litigation challenging the transit zones along the Hungarian-Serbian border. She explained that since March 2020 there has been almost no one in immigration detention in Hungary because the country has prohibited almost all access to asylum in the first place. However, she also highlighted how an aggressive litigation strategy can bring about real change—while the transit zones were in use, lawyers filed 73 complaints before the ECtHR, including 37 Rule 39 interim measures requests. This work ultimately led the transit zones to close, however as retaliation the government essentially cut off all access to the asylum procedure for migrants arriving in Hungary.

During the third and final Member State session we heard from practitioners working in Germany, Italy, and Malta. As the only representative from a Member State with no external border, Heiko Habbe from Fluchtpunkt Hamburg, explained that the use of immigration detention in Germany occurs mainly at the airport under the fiction of non-entry. Although detention within the context of the border procedure currently represents a small number of asylum cases in Germany, experts expect that it will increase in the coming years. In Italy, Anna Brambilla and Greta Albertari, presented on the broad detention scheme in the country. Currently, there are 10 detention facilities operating in the country, with another 10 planned to open in the next several years. In 2023, Italy introduced a new law that expanded the use of the border procedure and will lead to the mass detention of migrants arriving in the country.

Finally, Neil Falzon from the aditus foundation in Malta closed out the Member State sessions by presenting on the dire situation in Malta. As he explained, Malta detains migrants in the following situation: when they are denied entry, in waiting for medical clearance, asylum seekers in cases where the police apply for their detention and pending removal. Many people are detained in the Safi Detention Center, whose notoriously poor conditions have been condemned by both the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and ECtHR.

Throughout the conference, one thing became clear: many of the most egregious detention practices are replicated in Member States across the EU, often down to the smallest detail. Among those parallel challenges were the use of template detention orders, lack of access to legal counsel, the use of emergency legislation to implement de facto detention, and a trend of using detention as the norm rather than the exception. Despite those challenges, we also heard many success stories, including numerous cases won before the Court of Justice of the European Union (CJEU) and ECtHR, major policy changes, and legal challenges that led to the early release of many people. In that sense, the Member State panels also provided an important reminder that legal intervention can, and does, have an impact on detention policies and the people directly affected by them.

V. Immigration Detention & International Courts

Across panels, we learned that while immigration detention is on the rise, international courts continue to be an important tool for challenging this trend. We are grateful to have been joined by representatives from both the CJEU – Giovanna Lanni – and the ECtHR – Mehveş Bingöllü Kılıcı.



At the heart of this discussion was the cases concerning the Hungarian transit zones, a testing ground for the so-called alternatives to detention on which states are increasingly relying. In *FMS and Others (C-924/19)*, the CJEU defined detention as “a coercive measure that deprives [an] applicant of his or her freedom of movement by requiring him or her to remain permanently within a restricted and closed perimeter.” Examining the question of whether the Röske transit zone amounted to de facto detention, the Court found that it did because the applicants were required to stay permanently in the transit zone, had little freedom of movement within the facility, and were unable to leave without significant consequences, including losing their right to continue with their asylum procedure.

However, the ECtHR has taken a more conflicting view of right to liberty. Article 5 of the European Convention on Human Rights prohibits arbitrary detention. However, when something amounts to a deprivation of liberty—versus a “mere” restriction of movement—remains ambiguous, as the Court considers a range of criteria such as the type, duration, effects, and manner of the situation. In *Ilias and Ahmed* (No. 47287/15), which also concerned the Röszke transit zone, the Court found that the applicants were not deprived of their liberty because they were able to leave towards Serbia. However, in *RR and Others* (No. 36037/17), the Court diverged from its finding in *Ilias and Ahmed* and held that the applicants’ stay in the Röszke transit zone did amount to detention. Even so, what was clear from the session is that the ECtHR remains a useful tool for challenging unlawful national practices. However, as discussed below, implementation remains unpredictable and often insufficient.

During the discussion, participants raised several challenges. Before the CJEU, participants expressed frustration of being unable to reach the Court because domestic courts are hesitant to refer questions to the CJEU. More broadly, a common challenge is the implementation of court opinions. While attorneys from a number of countries shared successes at the European court level, they expressed concerns that their positive rulings were not being realized and translated into actual progress at the national level. Additionally, we discussed the inherent tension between demanding respect in courts for the Geneva Convention relating to the Status of Refugees of 1951 and its Protocol of 1967, and acknowledging its many shortcomings.

Overall, the session made clear that the courts are both a powerful and limited tool for challenging unlawful detention practices. Although, both the CJEU and ECtHR have issued several rights-protective decisions in the past decade, they have also given states broad power to detain migrants, particularly at Europe’s external borders.

VI. The Impact of Immigration Detention on Asylum Seekers



Friday was a packed day at the conference. The day ended with a panel discussing the negative impact detention has on individuals detained across Europe. Tina Al-Kharsan from Equal Rights opened the panel by highlighting the conditions in the Kos PRDC, with particular focus on the inadequate provision of food, healthcare, and sanitation, in addition to the carceral environment inside the facility.

Idel Hanley from Medical Justice UK then shifted to discussing detention centers outside of Greece and particularly in the UK, where unlawful detention conditions also compound to create an environment that is incredibly detrimental to migrants' mental health, many of whom already have histories of past trauma, resulting in negative outcomes like suicidal thoughts. Finally, Gabriella Brent from Amna closed by highlighting the long-term impacts of the abuse and mistreatment migrants face inside detention centers. In response to such conditions, conference attendees were educated on how to hold safer spaces for migrants in detention and on trauma-sensitive tools practitioners can incorporate into their client meetings in order to "do no harm and do some good."

VII. What is Next for Immigration Detention in the EU?

As the conference came to a close, we transitioned from thinking about what's happening now to considering the future. What's next for immigration detention in the EU? In some ways, we're already seeing what's to come. In places like Greece, Lithuania, and Hungary we see the use of alternative forms of detention like the CCAC in Kos and the Rösztke Transit Zone in Hungary.



Although in theory, we should welcome a move towards alternatives to detention, in reality these centers often replicate the conditions of detention and ultimately often amount to a deprivation of liberty. In the conference's closing session, we heard from some of the people who will be deciding exactly what that future looks like. The session, *The New Pact as a Shift to Detention?*, featured Professor Dr. Galina Cornelisse, Head of Sector Irregular Migration and Returns for the European Commission Catherine Delacour, Member of European Parliament Tineke Strik, and Member of the German Bundestag Clara Buenger. After a brief introduction to the New Pact, we moved on to discussing what it will mean if passed.

From the Commission's perspective, the New Pact is a major step forward and will dramatically improve the status quo. However, as highlighted by the other panelists, the New Pact fails to sufficiently acknowledge the harms of immigration detention and leaves too much room for Member States to rely on detention as a means of managing the border procedure. When pressed by both panelists and participants, the Commission was unable to fully explain how the New Pact will guarantee that Member States will uphold the right to liberty.

If the New Pact eventually passes, we should only expect more policies like the ones we're seeing at the external borders now, as states seek to keep even more people in de facto detention in the context of the border procedure. The current detention practices at the EU's external borders are a window into a future where the fundamental right to liberty is an empty promise. As we think about what comes next then, we must be prepared to document, raise awareness of, and ultimately challenge these new forms of detention before they become the norm.

VIII. What is Next for Advocates? & Outcome



Although the main goal of the conference was to learn about the different detention practices taking place across the EU, we wanted to take advantage of having so many experts from across Europe together in one room. With that in mind, our final meeting was a brainstorming session that took place on Saturday afternoon. During that session, we opened the floor to all participants to discuss the following three topics: (1) the common themes that emerged across Member States over the course of the conference (2) successful and creative legal challenges that could be replicated across states and (3) opportunities to collaborate across borders to collectively challenge some of the major problems we identified.

On the first issue, participants identified many common themes ranging from the consistent use of template detention orders across Member States to the increasing reliance on de facto detention, and barriers to documenting detention conditions. However, it was stressed that the lack of access to the detention centers for lawyers, the shortcomings in independent reporting and ultimately the deprivation of the access to effective legal protection for detainees, renders many efforts impossible in a system that is based on individual legal protection. On the second topic, participants shared a range of success stories. For example, participants from Greece discussed the ways in which appealing to the bar association has helped them address challenges accessing clients and detention facilities; other participants mentioned efforts they have made to report conditions to independent bodies to use in court procedures, while in Poland participants explained how they requested and reviewed dozens of case files to demonstrate that the authorities systemically fail to do an individualized assessment.

The brainstorming session ended by diving into the third topic: how can we cooperate to challenge immigration detention on a broader scale? Together we hope, we will continue to work on answering this question and to join forces. We are looking forward to following up on the ideas that came out of the brainstorming session and continuing the important work we began at the conference in the months ahead.



Thank you very much for making the conference possible!

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Annex I

Conference Material

We created a cloud that is publicly available.

Immigration Detention in the EU Conference Material



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Annex II
Final Conference Program

Conference

Immigration Detention in the EU



8.-10. June 2023



Kos, Greece
Porfiriou 21, 85300 Kos

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Kos hosts the only "Pre Removal Detention Center" in the Aegean and is home to what the EU Commission calls a "Multi Purpose Reception and Identification Center" and Greece calls a "Closed Controlled Access Center". In many ways, the island serves as a blueprint for detention policies within the EU. On paper, the EU's New Pact on Migration and Asylum establishes a "shift to detention," but in reality, deprivation of liberty is already the rule for many asylum seekers, especially those in the border procedures in Greece, Hungary, Lithuania, Poland and elsewhere in the EU. But how do practices across member states compare? For what reasons and on which legal basis are people deprived of their liberty? And, most importantly, what are successful and sustainable ways to challenge illegal detention practices?

To discuss these and connected questions, this conference brings together legal practitioners and scholars from across the EU. Based on a comparative approach, the aim is, firstly, to analyze and deconstruct detention policies and, secondly, to develop better strategies for addressing the undermining of the rule of law in the EU's asylum system.

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Immigration Detention in the EU Program

Thursday, 8 June 2023

📍 Porfiriou 21, 85300 Kos

14:00

Registration & Arrival

15:00

Welcome by Organizers

*Katharina Voss, Diakonie Deutschland
Jamie Kessler, Equal Rights Beyond Borders*

15:15

**Immigration Detention in Europe and the World
Overview on Developments and Status Quo**

Prof. Dr. Galina Cornelisse, Vrije Universiteit Amsterdam

16:15

Overview on Detention Practice on Kos

Jamie Kessler & Athina Ntavasili, Equal Rights Beyond Borders

**Site Visit to Pre-Removal Detention Center and Closed
Controlled Access Center (Bus Transfer)**

Sofia Dede & Athina Ntavasili, Equal Rights Beyond Borders







20:00

Common Dinner

📍 *Haihoutes, Agios Dimitros, 853 00 Kos, Transfer by Bus*

Friday, 9 June 2023

 Porfiriou 21, 85300 Kos

9:00	Welcome & Overview on Day
9:15-10:30	Panel: Immigration Detention in Court <i>Immigration Detention and the ECHR - Overview on Case-Law</i> <i>Mehveş Bingöllü Kılci, Deputy to the Head of FWMD and Filtering Section/Head of Rule 39 Unit - European Court of Human Rights</i> <i>Immigration Detention and the CJEU- Overview on Case-Law</i> <i>Giovanna Lanni, Senior Legal Advisor at Research and Documentation Directorate, Court of Justice of the European Union</i>
10:30-10:45	Coffee Break
11:00-11:30	'Alternatives to Detention' as Deprivations of Liberty <i>Robert Nestler, Equal Rights Beyond Borders</i>
11:30-13:00	Sessions from EU Member States I <i>Immigration Detention in Member States – always include practices, detention before, during and after the asylum procedure and court procedures.</i>  <i>Greece</i> <i>Athina Ntavasili, Equal Rights Beyond Borders & Elli Kriona Saranti, HIAS Greece</i>  <i>Poland</i> <i>Marta Górczyńska, Helsinki Foundation for Human Rights</i>  <i>Bulgaria</i> <i>Diana Radoslavova, Center for Legal Aid</i>
13:00-14:00	Common Lunch Break

14:00-15:30

Sessions from EU Member States II



Croatia Sara Kekuš, Centre for Peace Studies



Lithuania Justė Remytė, Lithuanian Red Cross



Hungary Gruša Matevžič, Hungarian Helsinki Committee

15:30-15:45

Coffee Break

15:45-17:15

Sessions from EU Member States III



Germany Heiko Habbe, Fluchtpunkt Hamburg



Italy Anna Brambilla, ASGI



Malta Neil Falzon, aditus foundation

17:15-17:30

Break

17:30-19:00

Conditions of Detention and its Effects on Individuals

Overview by *Tina Al-khersan, Equal Rights Beyond Borders*

Presentations

Natalia Kyrkopoulou, Amna

Idel Hanley, Medical Justice UK


20:30

Common Dinner



Ali Restaurant, Artemisias 23, Kos 853 00, Greece

Saturday, 10 June 2023

 Porfiriou 21, 85300 Kos

9:15	Welcome & Overview on Day
9:30-11:00	Breakout-Sessions <i>(45 minutes each, held twice)</i> What is Next? Detention without prospect of Return under the Return Directive <i>Dr. Kevin Fredy Hinterberger, Arbeiterkammer Wien</i> <i>Athina Ntavasili, Equal Rights Beyond Borders</i> Detention of Vulnerable Groups <i>Nicolas Wéry, Jesuit Refugee Service Belgium</i> Requests for Interim Measures at the ECtHR in Cases of Deprivation of Liberty <i>Mehveş Bingöllü Kılçı, Deputy to the Head of FWMD and Filtering Section/Head of Rule 39 Unit - European Court of Human Rights</i>
11:00-11:30	Break
11:30-13:00	The New Pact as a Shift to Detention? Overview by <i>Prof. Dr. Galina Cornelisse, Vrije Universiteit Amsterdam</i> Panel Discussion <i>Prof. Dr. Galina Cornelisse, Vrije Universiteit Amsterdam</i> <i>Clara Bünger, Member of German Parliament</i> <i>Catherine Delacour,</i> <i>Head of Sector Illegal Migration and Returns, EU Commission (online)</i> <i>Prof. Dr. Tineke Strik, Member of European Parliament (online)</i>
13:00	End of Conference and Common Lunch
14:00-15:45	Common Brainstorming Session



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