



JESUIT REFUGEE SERVICE
EUROPE



COVID-19 AND IMMIGRATION DETENTION: LESSONS (NOT) LEARNED

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ABOUT JRS

Jesuit Refugee Service (JRS) is an international Catholic organisation with a mission to accompany, serve and advocate for the rights of refugees and others who are forcibly displaced.

Project Learning from Covid-19 Pandemic for a more protective Common European Asylum System. The report Covid-19 and immigration detention: Lessons (not) learned presents the findings and the lessons learned from a mapping on the impact of Covid-19 on administrative detention in seven EU countries (Belgium, Germany, Italy, Malta, Romania, Portugal, Spain)

CREDITS

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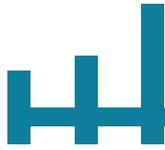
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BETWEEN the end of February and the beginning of March 2020 it became clear that the Covid-19 outbreak had reached Europe. By mid-March almost all EU Member States had adopted a range of measures to limit contagion, including lockdown measures severely limiting both in-country and international travel. Moreover, in many countries, governments ordered their populations to stay home for all non-essential purposes, and practise physical distancing when around other people.

JRS Europe and its partners immediately understood that such measures would affect the legal situation and living conditions of migrants held in immigration detention. From our perspective, as returns were virtually impossible due to the closure of external borders, detention had become unlawful. With Spain's official decision to start releasing people from detention, and similar, albeit unofficial, situations in other countries, JRS became hopeful that the pandemic could have the positive side effect of forcing policymakers to think about a migration system without detention.

Together with partners in **seven EU Member States** (Belgium, Germany, Italy, Malta, Portugal, Romania and Spain) we decided to assess the impact of the measures taken in relation to the Covid-19 outbreak on **detention-related policies, alternatives to detention, and the conditions in detention centres**.

We collected and compared information related to the situation in these fields **before, during and after the initial lockdown**, keeping track of relevant developments **until the end of November 2020**. In this report, 'lockdown' refers to the period in which the highest restrictions (i.e. limitations of movement, maximum limitation of social and public life and gatherings, closure of shops, bars, and restaurants) were in place in most countries. The initial lockdown period started approximately in mid-March and lasted until May/June 2020, for most countries. This was followed by a period in which Covid-19 restrictions were eased, though never completely removed. In the summer of 2020, some countries reintroduced stricter measures, and by the beginning of November 2020 new forms of lockdowns were in place again in most of the countries covered in this report.

This research is based on information gathered from the **direct experience of JRS partners** who regularly visit detention centres, follow up national relevant policy and legislative developments, and are in contact with the relevant national authorities. Such information was cross-checked and complemented by **desk research** to corroborate our findings. In the case of Italy, where JRS's direct work on detention is limited, the information was mainly gathered through desk research.¹ Our work was limited by several factors beyond our control: the intrinsically volatile situation related to the pandemic results in measures that are constantly changing and difficult to follow and evaluate, particularly given the short timeframe during which we conducted the mapping. Moreover, the direct experience of our partners does not always give a complete image of the detention-related issues in a given country, particularly because reality in detention can vary extremely from one detention centre to another. Nevertheless, we are confident that the findings that we present are sufficiently representative to enable us to draw relevant lessons and formulate recommendations for the future, both in the context of a pandemic, and more generally for a more humane migration policy.

¹ The main sources used are: 'Detenzione migrante ai tempi del Covid', CILD, July 2020, https://cild.eu/wp-content/uploads/2020/07/Dossier_MigrantiCovid.pdf [last accessed: 27/01/2021]; 'No one is looking at us anymore – Migrant detention and Covid-19 in Italy, Francesca Esposito, Emilio Caja, Giacomo Mattiello, Border Criminologies, University of Oxford, November 2020, https://www.law.ox.ac.uk/sites/files/oxlaw/no_one_is_looking_at_us_anymore.pdf [last accessed: 27/01/2020]

Detention in EU law

EU law provides specific grounds for detention of asylum seekers and irregular migrants, and only allows for it if other less coercive measures cannot be applied. According to the Reception Conditions Directive, asylum seekers can be detained in specific situations, such as for the purpose of identification, to decide on their admission to the territory, and to enforce a transfer to the EU Member State responsible for their asylum application.²

In addition, migrants can be detained for the purpose of enforcing returns. The Returns Directive establishes that 'Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process'.³ The directive also states that 'when it appears that a reasonable prospect of removal no longer exists for legal or other considerations [...] detention ceases to be justified and the person concerned shall be released immediately'. The directive does not oblige Member States to grant migrants a permit to stay if there is no reasonable prospect of removal, however it establishes that the former may at any moment do so 'for compassionate, humanitarian or other reasons'.⁴

• Detention largely maintained during and after lockdown

During the period between mid-March and June, non-essential travel within and outside Europe was highly restricted and discouraged, and flights were scarce. Enforcing returns in such circumstances was not only irresponsible in view of the containment of the virus, but also often not possible.

In JRS's view, following the provisions of the EU Returns Directive, this should have resulted in the immediate release of people from detention, and the suspension of new detention orders. However, no recommendation in this sense was given by the European Commission. On the contrary, according to the Commission, 'the temporary restrictions introduced by Member States and third countries to prevent and contain the spread of Covid-19 should not be interpreted as automatically leading to the conclusion that a reasonable prospect of removal no longer exists in all cases'.⁵ The countries covered by our mapping largely followed the Commission's guidance.

² Article 8 of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive).

³ Art. 15 of Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Returns Directive).

⁴ Art. 6(4) of the Returns Directive.

⁵ Communication from the Commission: COVID-19 - Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (2020/C 126/02), [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0417\(07\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0417(07)&from=EN) [last accessed: 27/01/2021]

• End of detention: officially only in Spain

In reality, only one country in Europe—Spain—proceeded to release all people held in detention centres, after a decision made by the Ministry of Interior, followed by specific instructions from the General Commissioner for Aliens and Borders, and the Secretariat of State for Migration, on how to actually carry out the releases. By mid-April, only three detainees remained in detention, and they were subsequently released on May 6.

In three out of the six other countries in our research (BE, DE, IT), many detainees were released in practice, but there was no official decision or instruction from the responsible authorities to release every person held in detention. The procedures and criteria that governed the releases were very unclear. In some cases, the regular detention time limits expired and were not extended because of the factual impossibility of return (DE), while in other cases, for the same reason, people were released before the end of the time limit (DE, BE). In Belgium, the General Direction of the Immigration Office decided on whom to release on a case-by-case basis and, based on their own declarations, they gave priority to vulnerable people.⁶ According to the information gathered, releases were mostly motivated by the impossibility of arranging the removal. In some cases in Belgium, particularly at the beginning of the lockdown, public health concerns were also mentioned as reasons for release. The health emergency was reportedly used as a reason by some judges in Italy to order the release of people. In Belgium and Italy, releases were also used to decrease the population in detention centres to facilitate the respect of basic Covid-19 prevention guidelines. In Germany, it remains unclear whether decreasing the occupancy in the centres was a motive behind the release of people.

In the remaining three countries (MT, PT, RO), no releases happened even where return was impossible. In Portugal and Romania, the responsible authorities seemed to interpret the situation as being only temporary and eventually extended the detention periods, in the expectation of being able to resume the enforcement of returns soon. The only releases that happened in Romania were those of families or vulnerable people, for whom the authorities did not seek to extend the detention periods, presumably knowing that the national responsible court would not allow it. In Portugal, the absence of flights to enforce returns resulted in even longer detention periods than before the pandemic.

Based on information gained, at first, through remote contacts and in person once they resumed visits, JRS's detention visitors reported increased tension and anxiety among detainees because of the lack of clarity on how the lockdown, and of the related impossibility of enforcing returns would impact the duration of their stay in detention. In Belgium, for instance, complaints were reported from detainees who did not understand why others were released and they were not.

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⁶ See the report of the Belgian Federal Centre for Migration (Myria) on their visits to detention centres, 'Visites de Myria dans les centres fermés de Merksplas, Bruges et Vottem entre le 10 avril et le 14 mai 2020 dans le cadre de la pandémie de COVID-19', July 2020, p.6, https://www.myria.be/files/Rapport_visites_aux_centres_fermes_-_COVID-19.pdf [last accessed 28/01/2021]

• **Suspension of new detention orders: officially only in Spain. Indefinite new detentions in Malta**

Again, it was only in Spain that the competent authorities released official instructions to the relevant actors not to approve or seek approval for the detention of irregular migrants for the purpose of expulsion or return.

Further, from the information gathered in Belgium and Germany, it emerged that the number of detainees during the lockdown period was lower than usual, which indicates that, along with the increased number of releases, less people than usual were arrested and detained. However, no official public communication was given in this regard. In Belgium, an unpublished internal instruction of the Immigration Office⁷ established that no new people found in irregular stay on the territory would be detained, however people arriving at the airport and found not in possession of the necessary travel and entry documents were still put in detention. Likewise, no national coordinated strategy was adopted in Italy. Only in the period after the lockdown, some reports have been found of judges refraining to issue detention orders, while others continued to do it.

In Malta, Portugal and Romania, detention went on as in normal circumstances. In Romania, the only exceptions were made for vulnerable people, who were in turn referred to JRS Romania's alternative to detention shelter. In Malta, the situation actually worsened. Before the pandemic, it was already legally possible to detain people arriving by boat for up to 70 days on public health grounds, and this time limit was regularly violated. However, some exceptions to detention upon arrival were made for certain vulnerable groups. After the Covid-19 outbreak, the Superintendence of Public Health made the decision to detain, for quarantine purposes, all people arriving on boats until they were tested for Covid-19. In practice, as the arrivals continued, people—including the vulnerable—remained, and continue to remain, in detention well beyond the 70-day limit.

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• **'Post lock-down' = business as usual**

With the exception of Belgium—where the unofficial policy of detaining less people was still being followed at the end of October—returns in the other countries resumed once flights started reoperating. Spain officially announced that they would restart detaining people on September 23, and effectively started doing so in the months that followed, albeit only for migrants arriving irregularly from the sea.

The possibility that individuals who had been released during the lockdown might be detained again is a reality in all countries examined.

**NEW DETENTION
POST-RELEASE
could happen
in all countries
examined**

⁷ As referred in the Myria report mentioned above.

•‘Toleration’ as the best case scenario

None of the countries provided people in irregular stay—who were released from detention or were apprehended and would have been detained in other circumstances—with a formal legal status during the period under examination. Their orders to leave the country, as well as the time limits given to follow these orders, remained generally valid. In Romania, due to the total closure of the administrations to the public during the lockdown, the government issued general instructions to automatically extend the expiration dates for all public decisions by 90 days. This measure also applied to return orders, though it was not specifically intended for them. In some countries, measures were taken to temporarily regularise people with pending applications (PT) or to extend the validity of residence permits that would otherwise have expired during the lockdown and during the following period (IT). This, however, did not concern people who had already received a return order or were in irregular stay when the lockdown started.⁸

THEIR ORDERS TO LEAVE THE COUNTRY, as well as associated time limits, were generally not altered

In the best case, where ‘toleration’ statuses already existed and were regularly granted before Covid-19, people got such ‘toleration’ (DE, RO).

•Accommodation post-release: only where good practices existed before Covid-19

Accommodation for those people who were released from detention and did not have a place to stay was only arranged in those countries where such practices were already in place. In Spain, people could access the publicly funded ‘humanitarian centres’ run by civil society organisations. In Germany, people were referred to the responsible municipality in charge of providing accommodation. In Romania, people were accommodated in JRS Romania’s shelter for tolerated people funded under national AMIF, however no extra funding was given to cover the increase in people being sheltered, and therefore the costs had to be covered by JRS.

No accommodation was organised for people released in Belgium, where only released asylum seekers could get a place in the regular reception centres. In Italy, this heavily depended on the good will of the director of the centre from where people were released, to check whether people had a place to go and subsequently contact the relevant social services to look for a solution.

No new initiative was triggered in this sense by the context of the pandemic. Homelessness and destitution among people released from detention is not a new phenomenon. However, it is particularly problematic in the context of the Covid-19 pandemic: the people concerned struggle more given the reduced availability of (face-to-face) services and the larger obstacles in finding (informal) jobs. Moreover, the homeless are also more exposed to the risk of contracting the virus, while forcing people into homelessness during the pandemic also poses an extra risk for general public health.

⁸ In May, the government in Italy also had adopted a regularization programme for agricultural workers, domestic workers and carers. It is impossible to assess to what extent this programme resulted in less people being detained. However, the fact that by August the number of application introduced was far lower than what the Italian government had expected, suggests that the impact of the programme on the reduction of irregularity and therefore detention is negligible. See PICUM, Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19, March-August 2020, <https://picum.org/wp-content/uploads/2020/10/Non-exhaustive-overview-of-European-government-measures-impacting-undocumented-migrants-taken-in-the-context-of-COVID-19.pdf> [last accessed 29/01/2021]



RECOMMENDATIONS APPLICABLE TO (SEMI) LOCKDOWN SITUATIONS

During the lockdown, flights within and outside Europe were quasi-absent. With the aim of reducing contacts among people and containing the spreading of Covid-19, non-essential travel was prohibited and, with varying degrees of strictness, remained discouraged when lockdowns eased. In JRS's views, this should have resulted in the halt of the practice of detention, as removal was, and to a large extent still is, virtually impossible and, in any case, irresponsible.

As long as non-essential travelling remains discouraged, and the context of the pandemic remains unsolved, as well as in any other context that should result in the halt of international travel for an unspecified time period, **JRS RECOMMENDS:**

TO THE RESPONSIBLE NATIONAL AUTHORITIES TO:

Officially introduce a suspension of immigration detention

Proceed to the release of all immigration detainees

If this, for organisational reasons, needs to happen in different phases, the order in which releases happen should be based on objective and non-discriminatory criteria (i.e. vulnerability, length of stay in detention, existence of autonomous alternative accommodation) and such criteria should be transparent and clearly communicated to the detainees.

Ensure accommodation arrangements for people released

If the authorities seek the cooperation of NGO to provide accommodation, they must ensure that adequate funding is made available to them.

Grant a regular legal status to the people released

Ensuring access to health care, and including the possibility of accessing the labour market or some form of subsistence support.

Establish community-based alternatives to detention

For eventual specific cases in which Member States may deem it necessary to carry out returns and may be able to do so in a practical way that duly takes into consideration the public health emergency (see 'Alternative to Detention in Covid-19 times: missed opportunity').

TO THE EUROPEAN COMMISSION TO:

Send clear guidance to Member States not to enforce returns in a time of pandemic

Send clear guidance on the need to suspend detention while non-essential travelling remains discouraged and removal is in most cases practically impossible

RECOMMENDATIONS BEYOND THE PANDEMIC

Despite EU harmonisation, legislation and practices about detention vary greatly among Member States, as does the actual maximum length of detention. Moreover, the context of the pandemic has shown how Member States might be inclined to keep people in detention during the allowed time limits, even if removal is not feasible.

For this reason, and particularly in the context of the negotiations on the recast Returns Directive, **JRS RECOMMENDS:**

TO THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EU TO:

Reject any ideas such as the Commission's proposal To oblige Member States to provide no less than three months as an initial period of detention

This provision is confusing and would increase the initial period of detention in several countries, and might result in people being automatically detained for three months even if it appears, at an earlier stage, that there are no prospects for removal. Detention must remain as short as possible and should be immediately terminated as soon as the criteria allowing for it are not met.

Clearly include in the Returns Directive a provision obliging Member States to provide migrants with at least a temporary regular status when there are no reasonable prospects for removal

Alternatives to detention before COVID-19

Both under the EU Returns Directive and the EU Reception Conditions directive, Member States may detention use under certain circumstances if no other 'less coercive measures' can be applied.⁹

JRS defines 'alternative to detention' as any policy, practice or legislation that allows asylum seekers and migrants to live in the community with freedom of movement, in respect of their right to liberty and security of person, while they undertake to resolve their migration status and/or while awaiting removal from the territory. For JRS, alternatives to detention should not be taken as alternative forms of detention, such as electronic tagging, which may substantially restrict or completely deprive a person's freedom of movement, and right to liberty and security of person.

Before the start of the Covid-19 pandemic, forms of alternatives to detention were present in three of the seven countries examined: Belgium, Germany, and Romania. In Belgium and Germany, however, the current practices do not meet JRS's definition of community-based alternatives to detention, either because they are not oriented at case-resolution—but rather keep an exclusive focus on enforcing returns—or because they considerably limit people's freedom of movement.

In Romania, JRS runs a shelter for people released from detention and people with tolerated status.¹⁰ This is formally recognized as an alternative to detention by the government and is financed under AMIF and JRS own funding. JRS Romania implements case-management and strives to resolve the immigration status of people taking into consideration all possibilities, including return.

• No new alternatives to detention established

JRS considers that detention during the lockdown, and to a larger extent also in the period that followed, was unlawful due to the de facto impossibility of enforcing returns. In this sense, no alternatives to detention should have been needed either. However, in reality, detention was largely maintained during the lockdown, and the Member States under examination resumed enforcing returns as soon as flights and travel restrictions allowed for it.

In this context, JRS had hoped that the circumstances of the pandemic could at least have some positive side effects and result in the establishment of new community-based alternatives to detention. However, we found that no new alternative to detention was established during the period under examination, including during and after the lockdown.

Of the countries where some form of alternatives to detention were present, it was only in Romania that the government systematically called on JRS to accommodate people released from detention or people who would otherwise be detained. This, in fact, is not different from regular practice; only the numbers of people released from detention were higher than usual due to the impossibility of enforcing returns. In Germany, the existing alternatives—such as reporting, house arrest and obligation to hand over travel documents—were sporadically used in individual cases, as is the case usually, as German law does still not provide for clear guidance on which alternative should be used in different contexts. Some new pilot projects started or were discussed in Belgium and Italy after the lockdown, but these were based on discussion and planning that took place prior to Covid-19.

⁹ Art. 8 Reception Conditions Directive and art.15 Returns Directive.

¹⁰ 'Toleration' is given both to people who are released from detention for various reason and to people who would be detained but are exempt – i.e. because of vulnerability. People who are tolerated need to show a residence otherwise they might be (re) detained. In that sense JRS Romania's shelter is recognized as an alternative to detention.



The lack of relevant impact mapped of the Covid-19 context on the development of alternatives to detention prevents us from formulating concrete lessons learned.

However, based on the existing experience around Europe, we can conclude that all the reasons as to why alternatives to detention are always to be preferred (i.e. respect of human dignity and freedom of movement, the possibility of establishing trusting relationships, increase migrant's engagement with the process and reduce absconding) gain enhanced importance in a context in which the preparation of removal processes might take longer.

Moreover, the context of the Covid-19 outbreak also reinforces the arguments in favour of adopting community-based alternatives to detention that implement case management as the preferred option. Case management ensures, namely, that all possible options for case resolution, including outcomes other than return, are properly examined, also against the specific context of the pandemic. Finally, allowing people to either remain in their own houses or to be accommodated in the community facilitates the respect of physical distancing, something intrinsically difficult in detention centres. Therefore **JRS RECOMMENDS:**

TO THE RESPONSIBLE NATIONAL AUTHORITIES TO:

Establish alternatives to detention

And apply them systematically, in accordance with the EU Returns Directive and the EU Reception Conditions directive. Alternatives to detention should be **community-based**, and implement **case management**. Cooperation with the civil society is important in this work, and NGOs' activities and efforts need to be adequately funded by the responsible authorities.

TO THE EUROPEAN COMMISSION TO:

Monitor the implementation of alternatives to detention

In the Member States, **encourage** them to test or set up programmes of **community-based alternatives**, and **give clear guidance on the need to systematically apply them**, particularly when preparing the organisation of removals within the context of such as that of the Covid-19 pandemic.

Detention conditions and external visits policies before Covid-19

Already before the Covid-19 pandemic, detention conditions varied considerably not only from one country to another but also among different detention centres in the same country. The reasons for it— and at the same time a common feature in almost all countries under examination in this work—include the large margins of discretion given to the centre's directors to organise and rule their centres.

Situations of overcrowding and, in general, conditions ranging from poor to very poor with regard to hygiene, legal and medical assistance were reported in Italy and Malta. In Belgium, the detention centres had almost reached their full occupancy before the pandemic, with concerns about hygienic conditions reported in some centres, and access to legal assistance reported as often problematic. In Germany, no particular concerns were reported on living conditions, however some problems on accessing medical assistance and mostly legal assistance were raised. Living conditions, as well as access to health and legal assistance, were considered as sufficient in Portugal and Spain.

Before the pandemic, visits by NGOs were allowed in all the countries examined. JRS visitors regularly entered detention centres in all countries. In Portugal, JRS has an office within the detention centre in Porto, and JRS staff is therefore present every day in the centre.

• Suspension or significant reduction of external visits

One of the almost immediate consequences of the measures taken to prevent the spread of the Covid-19 virus was the prohibition of people other than the centres' staff to enter and visit detainees. External visitors were officially not allowed in during the lockdown in 6 of the 7 countries examined (BE, DE, ES, IT, MT, PT), and visits ceased everywhere for at least two months between March and June.¹¹ In some cases, lawyers were allowed to meet with detainees during the lockdown, however often preferred not to do so as they feared for their own health.

In general, visits slowly resumed once the lockdown measures started to ease, albeit with some new rules for visitors aimed at preventing contagion, such as wearing personal protective equipment and keeping physical distancing. In some places, this meant that visitors who used to be able to access the centre's common room and meet detainees there could no longer do so. At the beginning of November, when new restrictions started to come into effect, it was unclear what would happen with visits. It seemed, however, that there was a general will to maintain the possibility of visits, provided that physical distancing and wearing of personal protection equipment (PPE) were respected.

¹¹ In Portugal, visits from volunteers had to stop, but as JRS has an office in the centre, they maintained their right to access. In Spain visits had to stop, but this has less impact on the overall situation as shortly after all detainees were released. In Romania, visits were officially allowed by the centres, however, JRS Romania suspended them between April and June partially due to the impossibility for the visitors to reach the centre due to the restriction of movement between municipalities for all citizens and partially because the measures taken by the centre at the time did not seem sufficient to guarantee the safety of the own staff.

• **Extremely limited remote contact with outside world**

In all the countries examined, JRS partners tried to maintain contacts with detainees via phone or other remote tools in the absence of visits.¹² This was in general very challenging because of the limited possibility for detainees to access phones or internet services. With the exception of Portugal and Spain—where detainees may use their phones (including smartphones) during specific timeframes—and Romania—where detainees can use mobile phones without cameras— the use of even simple mobile phones is often severely limited in the other countries (BE, DE, IT, MT). In Belgium, posters with the phone numbers of visitors were displayed in the centres, however few detainees availed of this. This did not come as a surprise given the very limited budget to call. In Malta, detainees cannot use their own phones and only have access to a telephone in some parts of the centre. As a result, they must wait hours or even days to be able to call, and it is very difficult for external people to call the back if needed.

Some small, good practices were flagged on the use of mobile phones and internet, such as the weekly distribution of €5 phone cards, the improved possibility of accessing the internet or exceptionally use personal smartphones twice a week (BE), and the expansion of IT infrastructure in some centres to allow for internet access (IT). However, these were most often the initiatives of good-will centre directors.

SOME SMALL GOOD PRACTICES on the use of mobile phones and internet

BUT MOSTLY initiatives of good-will centre directors

• **Huge differences in provision of Covid-19 related information**

When it comes to the provision of information regarding Covid-19 and the prevention measures, the mapping shows enormous variation, depending both on the country and on the different centres. In at least five countries (BE, DE, IT, PT, RO) some information was provided mostly in the form of information sheets or posters translated into several languages.

In general, however, the information collected by JRS visitors, either through remote contacts where possible or once they resumed visits, shows a general sense of anxiety among detainees due to the fact that they did not feel sufficiently informed, as they were not able to regularly follow news from the outside world, or get into contact with family, friends or visitors.

Moreover, in none of the countries examined did people appear to have received clear and sufficient information on how the pandemic would impact their legal situation and their stay in detention. This created additional anxiety, particularly in those countries where some people were released without a clear and transparent policy in place, and in places where detention was maintained despite the absence of flights to enforce returns in any foreseeable future.

¹² With the exception of Portugal, as JRS Portugal works had always access to the centre.

• Many obstacles to respect basic Covid-19 prevention rules

Only in three countries (BE, ES, IT) were some general rules and guidelines given from a central authority or administration during the first lockdown phase, on what measures to take to allow for the respect of basic Covid-19 prevention rules in detention centres, such as physical distancing, handwashing, and the provision and use of personal protective equipment.¹³ However, even in these cases, the actual details on how to implement such measures were left to either the local authorities and/or the centres' directors.

As a result, and given the already existing differences in conditions among centres, the way Covid-19 measures were implemented varied enormously. In general, the collective regimes of detention centres and the often-limited physical space make it extremely difficult to follow the rules on physical distancing, for instance, when standing in line for meals or when sharing sleeping and hygienic facilities with many others. In some cases (BE, DE), due to the decrease of occupancy in centres—as people were released and less people were apprehended—physical distancing was slightly easier. The provision and use of PPE, such as masks and hand sanitiser, also varies greatly, and visitors reported a general inconsistency in its use, both among detainees and centre's staff.

The research does not show a particular worsening in actual living and hygienic conditions in detention centres due to Covid-19. Where such conditions were already problematic, they remained so, and represented an added obstacle in the context of trying to contain the spread of the virus. We also must mention that with less external people allowed into the centres, it became harder to assess the actual conditions. What is clear is that everywhere the access to legal and medical services became more difficult during the lockdown as well as during the period that followed.

GENERALIZED ANXIETY AMONG DETAINEES because of lack of information

LIMITED PHYSICAL SPACE makes it difficult to enforce and follow social distancing rules

¹³ In the case of Spain, this is of little relevance as short after the start of the lockdown, the decision of release all detainees was taken by the government. In Germany, the responsibility for the organisation of the detention centres falls on the Länders and we do not have information about whether they produced guidelines.

RECOMMENDATIONS APPLICABLE TO (SEMI) LOCKDOWN SITUATIONS

If Member State maintain the use of detention during situations of (semi) lockdown, **JRS RECOMMENDS:**

TO THE RESPONSIBLE NATIONAL AUTHORITIES¹⁴ TO:

Guarantee the continuation of accompaniment of detainees

- ◆ Including legal and medical assistance, **by establishing national protocols with rules for the safe access of external visitors to detention centres.**
- ◆ Such rules should be publicly accessible. If a centre applies specific rules, e.g., because of its specific infrastructure, these should also be publicly accessible.
- ◆ Any limitation to external visits or to access of certain places in the centre, introduced with the purpose of preventing Covid-19, should be proportionate and reasonable to this aim, should be periodically evaluated, and should cease as soon as the public health situation allows for it.

Guarantee the possibility for detainees to maintain contact with the outside world

- ◆ Including family, friends, legal representatives, NGO visitors, and the possibility of following the news.
- ◆ To this end, national guidelines should be adopted to ensure sufficient access to mobile phones and internet for detainees, including the obligation for detention centres to provide the necessary IT infrastructure, and proactively put in place a framework that allows detainees to remotely have contacts with their legal assistants and representatives, and with NGO visitors.

Ensure the possibility of respecting basic Covid-19 related rules

Such as physical distancing. To this end, general **national standards** and guidelines are needed to ensure the same treatment for all detainees. Such guidelines need to be detailed and give guidance on issues such as the maximum number of people who should be allowed to share sleeping and hygienic facilities, how to organise common rooms and canteens, and the distribution and use of PPE both for detainees and staff.

¹⁴ If the administrative structure and the division of competences in a given a country (i.e. the German federal structure) does not allow for national protocols, coordination among the different responsible authorities should be organised in order to ensure the same treatment for all detainees' in the country.

RECOMMENDATIONS BEYOND THE PANDEMIC

JRS advocates for the end of administrative detention and the establishment of alternatives to detention. We therefore also oppose initiatives that would result in the expansion of the use of detention, as might be the case in the framework of the new EU Pact on Asylum and Migration¹⁵ currently under discussion. However, as long as the EU and its Member States maintain the use of administrative detention, and along with recommendations on the need to end overcrowding and generally improve detention conditions that were valid before Covid-19 and remain so, **JRS RECOMMENDS:**

TO THE RESPONSIBLE NATIONAL AUTHORITIES¹⁶ TO:

Work towards the harmonisation of detention conditions on their territories. In particular, they need to establish national rules:

- ◆ On the unhindered access of external visitors to detention centres, including places such as hotspots or other de facto detention facilities, i.e. at border crossings.
- ◆ To allow for the possibility for detainees to use mobile phones and internet.
- ◆ To include adequate and accessible communication and IT infrastructure among the services that must be available in detention centres.

TO THE EUROPEAN UNION TO:

Amend the existing common legislation, in particular Article 10 of the Reception Conditions Directive and Article 16 of the Returns Directive to include:

- ◆ The obligation for Member States to establish national, publicly available guidelines on the rules concerning the access of NGO and other external visitors into detention facilities.
- ◆ The obligation for Member States to allow the use of mobile-phones and internet.
- ◆ The obligation for Member States to ensure that adequate communication and IT infrastructure is available in detention centres.

¹⁵ All the legislative proposals under the new EU Pact on Asylum and Migration are available at https://ec.europa.eu/info/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en [last accessed: 29/01/2021]

¹⁶ If the administrative structure and the division of competences in a given a country (e.g. the German federal structure) does not allow for national protocols, coordination among the different responsible authorities should be organised in order to ensure the same treatment for all detainees' in the country.

Refrain from adopting any new legislation that introduces or expands the possibilities for the use of detention

As might be the case following the proposed 'pre-entry' Screening Regulation¹⁷ and the amended Asylum Procedures Regulation.¹⁸

In the event that new legislation enlarging the possibilities to use detention is adopted, ensure that it includes:

- ◆ The obligation for Member States to allow for external visitors in detention facilities, including from NGOs, and to make the relevant regulating frameworks public.
- ◆ The obligation to allow the use of mobile phones and internet to people held in such facilities.
- ◆ The obligation for Member States to ensure that adequate communication and IT infrastructure is available in detention centres.

Provide that the above-mentioned standards are applicable to places such as 'hotspots' and other facilities at the EU external borders where people might be kept in de facto detention conditions

¹⁷ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM/2020/612 final

¹⁸ Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2020/611 final



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