



European  
University  
Institute

ROBERT  
SCHUMAN  
CENTRE FOR  
ADVANCED  
STUDIES



MIGRATION  
POLICY CENTRE

# CONTENTION – Control of Detention

*Co-funded by the **EUROPEAN RETURN FUND** –  
“Community Actions” 2012*

Kick-Off Meeting of the Project Participants  
Florence, 28 February/1 March 2014





Objectives:

- Inform, analyse and compare judicial control of pre-removal detention** according to the **EU RETURN DIRECTIVE** with a view to:
  - **improving the judicial control,**
  - identifying and exchanging **best practices** among legal experts and practitioners.
  
- Launch of the first basis for **European networking among national judges hearing return cases.**



3 key questions asked within *CONTENTION*:

1. How do national courts hearing return/detention cases interpret such difficult (and new for many judges) elements for appreciation from the **RETURN DIRECTIVE** as:
  - Proportionality** in terms of the use of pre-removal detention, i.e. effective application of less coercive measures;
  - Necessity of a detention order:**
    - “Necessary to ensure **successful removal**”/A reasonable **prospect of removal**
    - “Risk of **absconding**” (plus “**objective criteria**”)
    - Particular conduct of the TCN (**avoiding/hampering**).



- ❑ **Necessity of the extension of detention:**
    - Continuing risk of **absconding**
    - A **lack of cooperation** by the TCN concerned
    - **Delays with the documents** due to the third country concerned
  
  - ❑ **Proportionality of the length of detention:** handling the 6/18 months rule
    - As **short** a period as possible
    - Existence of a **reasonable (real) prospect** of removal
    - Conduct of the TCN and the third country concerned
    - Removal arrangements **in progress** and executed with **due diligence**.
  
  - ❑ **Lawfulness** beyond the RD explicit necessity and proportionality test (e.g. G.R)
2. How **profound** is the judicial review?
  3. What has been the **impact** of the **Return Directive**?



## Participants of *CONTENTION*

More than 30 participants:

- ❑ **MPC:** Scientific director - Deputy Director of the MPC, Prof. Philippe De Bruycker, assisted by Sergo Mananashvili (post-doc at the MPC) and Geraldine Renaudiere (RA at the MPC)
- ❑ **Odysseus Academic Network** members from 11 MS
- ❑ **National judges** in charge of the judicial control of detention
- ❑ **Scientific Committee:**
  - Prof. Loic Azoulai (EUI, Director of the Centre for Judicial Cooperation)
  - Prof. Vincent Chetail (Director of the Global Migration Centre, the Graduate Institute of International and Development)



European  
University  
Institute

ROBERT  
SCHUMAN  
CENTRE FOR  
ADVANCED  
STUDIES



MIGRATION  
POLICY CENTRE

EU MS	Academic Legal Experts	National Judges
<b>AUSTRIA</b>	<p><a href="#">Ulrike Brandl</a> Associate Professor, University of Salzburg</p>	<p>Gero Schmied, Member of the Independent Administrative Senate of Vienna</p>
<b>BELGIUM</b>	<p><a href="#">Pierre D'Huart</a>, Researcher, KU Leuven <a href="#">Jean-Yves Carlier</a>, Professor, KU Leuven <a href="#">Sylvie Sarolea</a>, Professor, KU Leuven</p>	<p>Béatrice Chapaux, Counsel at the Court of Appeal of Brussels</p>
<b>BULGARIA</b>	<p><a href="#">Valeria Ilareva</a> Researcher at the the University of Sofia and the University Complutense of Madrid</p>	<p>Nataliya Angelova, Judge at the Administrative Court of Sofia City</p>
<b>CZECH REPUBLIC</b>	<p><a href="#">David Kosar</a>, Assistant Professor at the Department of Constitutional Law and Political Science, Faculty of Law, Masaryk University</p>	<p><a href="#">Zdeněk Kühn</a>, Justice at the Supreme Administrative Court of the Czech Republic</p>
<b>FRANCE</b>	<p><a href="#">Henri Labayle</a>, Professor of Law, holder of a Jean Monnet Chair at the University of Pau and Dean of the Faculty of Law at the University of Bayonne <b>Marie Garcia</b>, PhD Student, University of Bayonne, France</p>	<p>Michel Patrice, Deputy State's Attorney, Tribunal de Grande Instance of Toulouse, former FR representative at Eurojust</p>





European  
University  
Institute

ROBERT  
SCHUMAN  
CENTRE FOR  
ADVANCED  
STUDIES



EU MS	Academic Legal Experts	National Judges
<b>GERMANY</b>	<p><a href="#">Kay Hailbronner</a>, Professor, Director of Research Centre Immigration &amp; Asylum Law, University of Konstanz</p> <p><a href="#">Daniel Thym</a>, Professor, University of Konstanz, Co-Director of the Research Centre Immigration &amp; Asylum Law.</p>	Ulrich Drews, Judge at the Regional Court of Appeal of Thuringia
<b>ITALY</b>	<p><b>Alessia Di Pascale</b>, Senior Research Fellow, University of Milan</p> <p><a href="#">Bruno Nascimbene</a>, Professor of EU Law at the University of Milan</p>	Pier Luigi di Bari, Counsel at the Court of Appeal of Bologna
<b>NETHERLANDS</b>	<p><a href="#">Galina Cornelisse</a>, Assistant Professor, Lecturer in EU Law and International Law, VU University Amsterdam</p> <p><a href="#">Thomas Spijkerboer</a>, Professor of Migration Law, VU University Amsterdam</p>	Johannes Franciscus Maria Joseph (John) Bouwman, Senior Judge at the District Court of Eastern Netherlands
<b>SLOVAKIA</b>	<a href="#">Martin Skamla</a> , Advocate, Member of the Slovak Bar Association.	Elena Berthotyova, Judge at the Supreme Court of the Slovak Republic





European  
University  
Institute

ROBERT  
SCHUMAN  
CENTRE FOR  
ADVANCED  
STUDIES



MIGRATION  
POLICY CENTRE

EU MS	Academic Legal Experts	National Judges
SLOVENIA	<a href="#">Saša Zagorc</a> , Assistant Professor at the Faculty of Law, University of Ljubljana	Boštjan Zalar, High Court Judge at the Administrative Court of the Republic of Slovenia, Head of the Office for European Law
UNITED KINGDOM	<a href="#">Elspeth Guild</a> , Jean Monnet Professor ad personam at Queen Mary, University of London, Professor at the Radboud University Nijmegen	<a href="#">Daniel Wilsher</a> , Part-time Immigration Judge, Senior Lecturer in Law and Pro Bono Co-ordinator at the City Law School
HUNGARY <i>OBSERVER</i>	<b>Tamás Molnár</b> , Member of the Contact Committee – Return Directive, Assistant Professor at the Corvinus University of Budapest, Head of Unit for Migration and Border Management, Ministry of Interior (Hungary).	







European  
University  
Institute

ROBERT  
SCHUMAN  
CENTRE FOR  
ADVANCED  
STUDIES



MIGRATION  
POLICY CENTRE

*Modus operandi:*

Outputs/Deliverables	Timeframe
Official <b>START</b> of the project	16 December 2013
<b>EXPANATORY NOTE</b> and <b>QUESTIONNAIRE</b> for national reports	December 2013 – February 2014
<b>KICK-OFF</b> meeting in Florence	February 2014
Case-law <b>DATABASE</b> : listings of approx. 50 (especially landmark) judgements per 11 MS	February 2014 - May 2014, November 2014
<b>NATIONAL REPORTS</b> by Odysseus experts	March-May 2014





Outputs/Deliverables	Timeframe
<b>SYNTHEIS REPORT</b> by the coordination team	June-August 2014
<b>INTERMEDIATE CONFERENCE</b> in Florence	End of September 2014
<b>FINAL CONFERENCE</b> in Brussels	December 2014
<b>3 POLICY BRIEFS</b>	March, October, December 2014
<b>BOOK</b> on comparative aspects of the control of pre-removal detention in the EU	January 2015