



FACULTY OF LAW
Lund University

Emma Olsson

Blurred lines

- an analysis on the privatisation of migration detention in
the EU and its consequences

JURM02 Graduate Thesis

Graduate Thesis, Master of Laws program
30 higher education credits

Supervisor: Amin Parsa

Semester of graduation: Period 2 Fall semester 2016

Summary	1
Sammanfattning	2
Preface	3
Abbreviations	4
1. Introduction	5
<i>1.1 Background</i>	5
<i>1.2 Purpose and research question</i>	12
<i>1.3 Methodology and delimitation</i>	13
<i>1.3.1 The migration industry</i>	17
<i>1.3.2 Crimmigration</i>	19
<i>1.4 Terminology</i>	22
<i>1.5 Outline</i>	24
2 The emergence of the current migration regime in the EU	25
<i>2.1 The start of the free movement for some..</i>	25
<i>2.2 ... but not for others</i>	27
3 Privatisation of detention in the EU	28
<i>3.1 UK</i>	28
<i>3.2 Italy</i>	31
<i>3.3 Germany</i>	33
<i>3.4 France</i>	33
<i>3.5 Austria</i>	34
<i>3.6 The Netherlands</i>	35
<i>3.7 Spain</i>	35
<i>3.7 Greece</i>	35
4. Regulations around detention	36
<i>4.1 When can you detain?</i>	36
<i>4.1.1 Detention of asylum seekers and pre-expulsion detention</i>	37
<i>4.1.2 Last resort and alternatives to detention</i>	39
<i>4.1.3 Deterrence</i>	40
<i>4.4 Where and how can you detain?</i>	41
<i>4.4.1 Conditions for asylum seekers and persons in the return process</i>	41
<i>4.4.2 Conditions for vulnerable groups</i>	42
<i>4.5 How long can you detain?</i>	43
<i>4.5 Who can detain?</i>	46
5 Practices of privatisation and its criticism	47
<i>5.1 Abuse and mental health</i>	47
<i>5.2 Cutting costs and increasing profits</i>	52
<i>5.3 Lobbying and lock-in effects</i>	55
<i>5.4 Crimmigration</i>	58
<i>5.5 Accountability and responsibility</i>	60
<i>5.6 Transparency and secrecy</i>	66
6. Blurred lines	69
7. Conclusion	71
Bibliography	73
Table of cases	87

Summary

The role of migration in the world has become a highly politicised issue. With more money than ever put into the border control and migration management a platform has opened up for private actors.

This thesis aims to explore the privatisation of migration detention in the EU and the consequences thereof. This thesis aims to explore the legal issues that could arise when private entities are getting more involved in the migration detention regime. Further it examines the underlying rationales for migration detention in general and the privatisation of migration detention in particular. By an interdisciplinary method the thesis will describe the current state of the migration detention regime today and through a legal dogmatic method examine the legal framework surrounding it.

The thesis shows that there is a trend in the EU pointing towards an increase use of non-state actors in the migration detention regime, and that this could increase violations of migrant's rights. Further it will show that there is a political economy and financial incentives to uphold the migration detention regime that falls outside the said normative goals of detention set out in the legal framework.

The thesis will show that with a market based dynamic where the company's interest is primarily to make a profit can lead to an increase of human rights violations of detained migrants. The thesis also shows that blurred lines between punitive and administrative measures creates a rationale for the upholding of the detention regime and that the blurred lines between the public and the private creates confusion in regards to accountability and responsibility for violation of the rights of migrants. The thesis also shows that this is further enhanced due to a lack of transparency and public scrutiny.

Sammanfattning

Migration har ökat blivit en politisk fråga. I och med att EU och medlemsstaterna satsar mer pengar på gränskontroll så har en lukrativ marknad öppnats för privata företag.

Syftet med förevarande uppsats är att undersöka privatiseringen av förvar i EU och dess konsekvenser. Uppsatsen ämnar undersöka de juridiska problem som kan uppstå när private aktörer blir ökat involverade i förvarsregimen. Vidare ämnar uppsatsen undersöka de underliggande logikerna för användandet av förvar i allmänhet och privatiseringen av förvar i synnerhet. Genom en interdisciplinär metod kommer uppsatsen beskriva den nuvarande situationen i relation till privatisering av förvar i EU och genom en rättsdogmatisk metod undersöka det rättsliga ramverket.

Uppsatsen visar på att det finns tendenser till en trend av mot en ökad användning av privata aktörer i driften av förvar inom EU. Vidare påvisar uppsatsen att det finns en politisk ekonomi och ekonomiska incitement för att uppehålla användandet av förvar som sträcker sig utanför de normativa mål som det juridiska ramverket föreskriver.

Uppsatsen påvisar att en marknadsbaserad logik resulterar i att företags främsta intresse är vinst vilket kan leda till att migranters rättigheter åsidosätts. Vidare påvisas det att otydliga gränser mellan straffåtgärder och administrativa åtgärder bidrar till upphållandet av förvarsregimen samtidigt som ökat oklara gränser mellan det privata och det offentliga resulterar i en oklar ansvarsfördelning somgår ut över migranters rättigheter. Detta kompliceras vidare en ökad brist på transperans och offentlig insyn vid inblandning av privata aktörer.

Preface

Without making this into an Oscar speech I would like to express gratefulness to everyone around me who tries to makes this world a little bit better everyday, all in their own amazing way.

If it weren't for my family I would not be who I am today. I am eternally grateful for you all being my rock in this world and I can begin to explain how lucky I am. You are the best people I know in the whole wide world and you always believe in me more than I believe in myself. A special thanks is in order to Gustaf who stayed up late just to look through my text and make sense of my words.

Especially I really need to shine the spotlight on *Joanna*, my partner in crime, and the only reason I got through these years. Without her invaluable support and help I would not be writing this. You are brilliant.

A massive 'thank you' is also aimed at my supervisor Amin Parsa who has guided me through my thoughts and constantly seemed to have more confidence in me than I have had in myself.

Abbreviations

AAPG	All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration
CCA	Corrections Corporations of America
CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
GDP	Global Detention Project
ICCPR	International Covenant on Civil and Political Rights
IDC	International Detention Coalition
NGO	Non-Governmental Organisation
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

1.1 Background

As of June 2016 United Nation High Commissioner for Refugees (UNHCR) estimated the number of the people forced to leave their home to 65,3 million which is the highest number since the Second World War. Most of these people, 86 %, are in their countries of origin or neighbouring countries.¹ Even though there was a rise in people attempting to reach Europe starting in 2015, Europe is only hosting 6 % of the world's displaced people.² In 2015 the number of refugees and irregular migrants arriving in the European Union (EU) rose to over 1 million in 2015, with 84 % coming from the world's top 10 refugee producing countries.³

The response to the ‘refugee crisis’, as it was referred to by media and politicians, has been wide. Meetings have been held on an EU-level in order to find ‘solutions’ to stop irregular migrants from entering the EU. This has led to the criticised EU-Turkey deal⁴ as well as the negotiation of a new, more restrictive common policy of asylum seekers.⁵ Member states have already restricted their asylum rules. Traditionally considered one of the more generous asylum countries Sweden passed a temporary law in 2016 which put their asylum regulations down to a EU minimum standard.⁶

The response to the ‘refugee crisis’ has also been an evident increase in border surveillance and militarisation of the borders, both on land and sea.

¹ UNHCR, ‘Global Trends: Forced Displacement in 2015’ (2016) <<http://www.unhcr.org/576408cd7.pdf>> accessed 20 february 2017.

² UNHCR, ‘Figures at a Glance’ (2016) <<http://www.unhcr.org/figures-at-a-glance.html>> accessed 20 february 2017.

³ J. Clayton, ‘Over one million sea arrivals reach Europe in 2015’ UNHCR (30 December 2015) <www.unhcr.org/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html> accessed 27 february 2017.

⁴ EC, ‘EU-Turkey Statement’, Press Release 144/16 (18 March 2016) <www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> accessed 27 february 2017.

⁵ EC, ‘Completing the reform of the Common European Asylum System: towards an efficient fair and humane asylum policy’, Press Release, IP/16/2433 (13 July 2016) <http://europa.eu/rapid/press-release_IP-16-2433_en.htm> accessed 7 March 2017.

⁶ Migrationsverket, ‘New laws in 2016’ (2016) <www.migrationsverket.se/English/About-the-Migration-Agency/New-laws-in-2016.html> accessed 7 March 2017.

‘Operation Sophia’ was the first big military reaction on an EU level. It was launched in 2015 after 2 boats sank outside the Libyan coast leading to the death of several hundreds of people. The North Atlantic Treaty Organization (NATO) joined the mission in the Mediterranean in 2016. NATO is also active in supporting Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (since 2016 the European Border and Coast Guard Agency). NATO also assists the Turkish and Greek coast guards in the Aegean Sea.⁷ In total, EU member states have built more than 235 km of fences at the EU’s external borders costing in excess of 175 million euros.⁸ In 2015, Hungarian authorities built a four-metre fence stretching the 175 km border between Hungary and Serbia.⁹ In 2016 Bulgaria had finished a 146 kilometre barbed wire fence along its borders with Greece and Turkey.¹⁰ Several countries have also used military means and personnel to guard their borders. Hungary also deployed army to police the border.¹¹ Bulgaria has used soldiers at their border with Macedonia.¹² Macedonia in turn have had armed forces using tear gas and stun grenades to stop refugees from entering the country from Greece.¹³

Although these measures of militarisation of border security have dramatically intensified in the last few years, they are not new. It builds on long-standing EU policies. The foundations of the current EU border security policies were laid with the signing of the Schengen Agreement in June 1985

⁷ NATO, ‘Defence Ministers take forward NATO-EU cooperation’, Press Release (27 October 2016) <http://www.nato.int/cps/en/natohq/news_136844.htm> accessed 7 March 2017.

⁸ Amnesty International, ‘Refugees endangered and dying due to EU reliance on fences and gatekeepers’ (17 November 2015) <www.amnesty.org/en/latest/news/2015/11/refugees-endangered-and-dying-due-to-eu-reliance-on-fences-and-gatekeepers/> accessed 7 March 2017.

⁹ BBC, ‘Hungary builds border fence to control migrant numbers’ (6 August 2015) <www.bbc.com/news/world-europe-33799208> accessed 7 March 2017.

¹⁰ N. Thorpe, ’Migrant crisis: Bulgaria tightens border with Turkey’ *BBC* (3 June 2016) <www.bbc.com/news/world-europe-36435420> accessed 7 March 2017.

¹¹ BBC, ‘Migrant crisis: Hungary military stand on guard at border’ (22 September 2015) <www.bbc.com/news/world-europe-34321141> accessed 7 March 2017.

¹² A. Krasimirov, ‘Bulgaria to use army to help guard border in migrant crisis’ *Reuters* 1(8 February 2016) <www.reuters.com/article/us-europe-migrants-bulgaria-idUSKCN0VR19E> accessed 7 March 2017.

¹³ S. Nenov, ‘Greece condemns Macedonia tear gas and rubber bullets against migrants’, *Reuters* (10 April 2016) <www.reuters.com/article/us-europe-migrants-greece-teargas-idUSKCN0X70CD> accessed 7 March 2017.

along with the supplemental Schengen Convention of 1990.¹⁴ This resulted in the creation of the ‘Schengen Area’ with open internal borders and increasingly closed outer borders. The Amsterdam Treaty of 1999¹⁵ incorporated the Schengen treaties and rules into European Union law.

In 2005 the Hague Programme prioritised the ‘fight against all forms of illegal immigration’.¹⁶ Several policy objectives were set and they have continued to be the core of EU’s migration policies. This included the cooperation with third countries, ‘the strengthening of controls at and surveillance of the external borders of the Union’ as well as harmonised solutions in the EU on biometric identifiers and data.¹⁷ A part of the development of the security advancements was Frontex, an EU agency set up for the protection of the external borders with the main task of coordinating and supporting border security efforts of the EU member state. In 2016 it was transformed into the more powerful European Border and Coast Guard Agency.¹⁸ As such, the securitisation and strengthening of border control in the EU is not a new practice, but it seems to have gradually intensified. To exemplify this it can be noted that the budget of Frontex has increased from 6.3 million euro in 2005 to 238.7 million euro in 2016, and is set to increase to 322 million euro in 2020.¹⁹

This development of EU’s external borders and the harshening attitude against irregular migration has not come without consequences. Human rights abuses along the borders have included pushbacks.²⁰ Pushbacks have been

¹⁴ 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, 19 June 1990, O.J L 239.

¹⁵ Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts, 1997 O.J C340/1.

¹⁶ The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 13 December 2004, 2005/C 53/01.

¹⁷ Ibid.

¹⁸ The new agency will have control over member states border security efforts and a more active role as a border guard itself as well as increased mandate to purchase its own equipment. See Frontex, ’About the agency’ (2017) <<http://frontex.europa.eu/pressroom/faq/about-the-agency/>> accessed 7 March 2017.

¹⁹ Ibid.

²⁰ Push-backs happen when people are pushed back to the country they are trying to leave – or in some cases into the high seas – shortly after they cross the border, without an opportunity to challenge their forced return. Push-backs usually involve a group of people.

reported for example on the borders between Bulgaria and Greece as well as the border between Greece and Turkey. Most of the pushbacks are associated with violence and ill treatment.²¹ The efficiency of the securitisation of the EU border in regards to stopping irregular entries is contested. Increased border surveillance and attempts to close borders and migration routes could force migrants to take more risks. When border surveillance increase migrants tend to for example travelling in smaller, unsafe vessels to in order to avoid detection at sea. Migrants can also be forced to take alternate, more dangerous routes as border security is increased of the safer routes. In 2016 there was a decrease in total of migrants arriving in the EU, although, estimated number deaths for migrants trying to reach Europe was the highest number yet. Over 5000 people drowned in 2016 making an average of 14 people drowning each day of the year.²²

The increased focus on and investment in border security has opened up a profitable market for companies that provide security equipment, surveillance technology, and IT infrastructure to track population movements. EU funding is financing a significant part of the border security purchases made by EU member states. Between 2007 and 2013 the EU aimed 60 % of its Home Affairs budget to immigration control measures, a total of 4 billion euro. This does not include the additional spending from individual member states.²³ The value of the global security market has been valued at 15 billion euro in 2015, while another report estimates a growth to over 29 billion euro in 2022.²⁴

The deportation of a group of people without looking at each case individually is a collective expulsion and is prohibited under international law.

²¹ See Amnesty International, 'The Human Cost of Fortress Europe' (July 2014) <www.amnesty.eu/content/assets/Reports/EUR_050012014_Fortress_Europe_complete_web_EN.pdf> accessed 7 March 2017; Human Rights Watch, 'Bulgaria: Pushbacks, Abuse at Borders' (20 January 2016). <www.hrw.org/news/2016/01/20/bulgaria-pushbacks-abuse-borders> accessed 7 March 2017.

²² UNHCR, 'Mediterranean Sea: 100 people reported dead yesterday, bringing year total to 5,000', 23 December 2016) <www.unhcr.org/news/briefing/2016/12/585ce804105/mediterranean-sea-100-people-reported-dead-yesterday-bringing-year-total.html> accessed 7 March 2017.

²³ M. Flynn, 'From Bare Life to Bureaucratic Capitalism: Analyzing the growth of the Immigration Detention Industry as a Complex Organisation' (2016a) *Contemporary Readings in Law and Social Justice* 8(1): 70-97, p. 71.

²⁴ M. Akkerman, 'Border Wars: The Arms Dealers Profiting on Europe's Refugee Tragedy' (Transnational Institute 2016) p. 35. <<https://www.tni.org/en/publication/border-wars>> accessed 8 March 2017.

One way for private companies to place themselves on the market has been by lobbying for the need for more border security and harsher control policies. Lemberg writes that this lobbyism demonstrates how 'PSCs [Private Security Companies] establish themselves as experts on border security, and use this position to frame immigration to Europe as leading to evermore security threats in need of evermore advanced PSC products.'²⁵ European Organisation for Security (EOS) is a lobby organisation of the European security industry. Members of the organisation are companies such as Airbus, Finmeccanica and Thales who are also some of the key companies profiting from border security. To establish themselves they created different workgroups on issues related to border security and mirrored the discourses of the central EU institutions in order to implement the agendas of the EU in accordance with the interests of the EOS members. EOS claim to be working closely with the Commission and has organised several meetings between industry and EU officials and politicians on border security.²⁶ According to Lemberg 'EOS is a comprehensive tool with which PSCs seek to influence the common European border politics so as to create a demand for their products.'²⁷

Private security companies have also increasingly gotten directly associated with the public bodies of the EU and the policy-making on security and border control, blurring the lines between the public and the private. In 2003 the European Commission (EC) announced that they wanted to put together a research programme on security and border control in order to boost the competitiveness of the European security industry.²⁸ To develop this research program several actors were invited to be a part the so-called 'Group of Personalities' (GoP). The GoP comprised of EU officials and eight of Europe's biggest arms and IT companies, including Airbus (then EADS), BAE Systems, Finmeccanica, Indra and Thales. In the group was also representatives from NATO, the Western European Armament Association and

²⁵ M. Lemberg Pedersen, 'Private security companies and the EU borders', in: Thomas Gammeltoft-Hansen, Ninna Nyberg Sørensen, *The Migration Industry and the Commercialization of International Migration* (Routledge, 2013) p.163.

²⁶ Ibid., p. 162-163.

²⁷ Ibid., p. 162.

²⁸ Ibid., p. 163.

the EU Military Committee. Their recommendations stressed the importance of bringing together the ‘demand’ and ‘supply’ sides to define a strategy together for the future action of European security research.²⁹

In 2007 the 7th Framework Programme (FP7) was established with a 1,4 billion euro budget between 2007 and 2013. Within the programme the European Security Research Innovation Forum (ESRIF) was created. The purpose of the forum was to develop a ‘public-private dialogue’.³⁰ However the public-private ratio could be questioned as only 3 out of the 65 members were representing public, i.e. the European Parliament.³¹ In a report from 2009 they stressed the importance of companies being involved in the development of relevant technology.³² Since 2002, through several research initiatives³³, the EU has funded 56 projects in the field of border security and border control with over 316 million euro.³⁴ This includes the development of ‘mechanical sniffer dogs’, drones to monitor land and maritime borders as well as satellite surveillance.³⁵ Companies sharing the majority of the projects within the FP7 include Thales, Finmeccanica and Airbus, the same companies that are the most active lobbyists and are involved in the development of different research programmes. As a report commissioned by the European Parliament confirms: ‘[i]t is mostly large defence companies, the very same who have participated in the definition of EU-sponsored security research which are the main beneficiaries of FP7-ST funds.³⁶

²⁹ Ibid., p.163 ff.

³⁰ EC, ’The European Security Research and Innovation Forum (ESRIF) - Public-Private Dialogue in Security Research’, Press Release MEMO/07/346 (11 September 2016). <http://europa.eu/rapid/press-release_MEMO-07-346_en.htm> accessed 7 March 2017.

³¹ M. Lemberg-Pedersen, 2013, p. 164-165.

³² ESRIF, ‘Final Report’ (December 2009) p .78. <http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=3888&lang=en> accessed 7 March 2017.

³³ Framework Programmes 6 and 7, Horizon 2020, the Preparatory Action for Security Research (PASR), the GMES-Programme (satellite observation) and the European Space Agency (ESA).

³⁴ M. Akkerman (2016) p. 30.

³⁵ L. Arbogast, ’Migrant detention in the European Union: a thriving business: Outsourcing and privatisation of migrant detention’ (Migreurop 2016) p. 7. <<http://www.migreurop.org/IMG/pdf/migrant-detention-eu-en.pdf>> accessed 20 January 2017.

³⁶ European Parliament Directorate General for Internal Policies, ‘Review of security measures in the Research Framework Programme’ (2010) p. 23. <[www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509979/IPOL-LIBE_ET\(2014\)509979_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509979/IPOL-LIBE_ET(2014)509979_EN.pdf)> accessed 7 March 2017.

Private companies have become increasingly involved in other aspects of the migration industry, from deportation, detention and transportation to catering, health care and housing. In Sweden parts of the housing of asylum seekers has been privatised resulting in large profits for companies. Reports of large profits are accompanied with reports of substandard housing conditions including bad hygiene routines, poor food and broken furniture in the housing arrangements.³⁷ The trend of making a profit of the housing of asylum seekers is also evident in Germany where chancellor Angela Merkel noted the problem saying ‘people are practically being treated as products and are being exploited’.³⁸ A spokesman for European Homecare, a private company, providing housing for asylum seekers in for example Germany said, ‘We’re doing something some people consider dirty: we make money.’³⁹

During the last 30 years the detention of foreigners under migration powers have increased drastically.⁴⁰ The expanded use of detention centre has created a profitable platform for private companies. In the United Kingdom (the UK) the biggest actors are Mitie, the GEO Group, Group 4 Securior (G4S), that together run 7 out of the 11 migration detentions.⁴¹ In 2017 G4S won a contract for a new migrant removal center for families spanning over a 3 year period with a possible 2 year extension.⁴² In 2012 G4S won a 234 million dollar contract with the Homeland Security in the United States (the US) to

³⁷ D. Crouch, ‘Swedish private housing sector accused of profiting from refugees’ *The Guardian* (18 October 2016) <www.theguardian.com/world/2015/oct/18/swedish-private-housing-sector-refugees> accessed 20 February 2017; C. Neurath, ‘Usel hygien på Bert Karlssons boenden’ *SvD Näringsliv* (8 October 2015) <www.svd.se/usel-hygen-pa-bert-karlssons-boenden> accessed 21 February 2017.

³⁸ B. Knight, ‘Turning a profit from the refugee crisis’ *Deutsche Welle* (25 February 2016) <www.dw.com/en/turning-a-profit-from-the-refugee-crisis/a-19075513> accessed 7 March 2017.

³⁹ B. Jordan, ‘From hostel operators to traffickers, Europe’s migrant crisis proves boon for some businesses’ *U.S News* (27 September 2015) <www.usnews.com/news/business/articles/2015/09/27/migration-crisis-proves-boon-for-some-businesses> accessed 7 March 2017.

⁴⁰ D. Wilsher, *Immigration Detention* (Cambridge University Press 2012), p ix.

⁴¹ Migration Observatory, ‘Immigration Detention in the UK’, (University of Oxford 2016) <www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/> accessed 20 February 2017.

⁴² A. Travis, ‘G4S to take over welfare support for families facing deportation’ *The Guardian* (9 February 2017) <www.theguardian.com/uk-news/2017/feb/09/g4s-welfare-support-families-children-deportation-gatwick> accessed 20 February 2017.

transport migrant detainees⁴³ and Serco is running 11 migration detention centers in Australia where the value of their contract is at 1.67 billion AU dollar.⁴⁴ With a handful of multi-national companies increasingly in charge of functions that used to be considered the sole responsibility of governments it is important to address the effects this can have on the development of the detention regime and the rights of migrants.

1.2 Purpose and research question

As reflected in the background, the securitisation and militarisation of migration control in the EU has increased and opened up for a lucrative market for private security and military companies on the border security market. Other areas of the migration industry have also been subject to privatisation. This thesis aims to examine the privatisation of migration detention. The main question that this thesis seeks to answer is: what are the legal effects the privatisation of migration detention? In order to answer this I will first account for the regulations concerning migration detention. By doing so I will make clear when migration detention can be used and what the purpose of migration detention is. Further I will examine if there are motivations other than those intended law that could affect the use of migration detention by looking at the development in the EU. Identifying the non-state actors involved in the detention regime and their different motives will be essential to examine the political economy of migration detention regime. All of the above will lead up to an analysis on the legal effects that privatisation of migration detention can have. I argue that there is a political economy behind the use of detention centers and that legal issues arise when it is privatised. My main research question can therefore be formulated as follows:

- *What are the legal effects of privatising the migrant detention regime?*

⁴³ Federal business Opportunities, 'Southwest Border Transportation, Medical Escort and Guard Services'

<www.fbo.gov/index?s=opportunity&mode=form&id=91edd01479626bfcaf64a03d99649c3a&tab=core&_cview=1> accessed 25 February 2017.

⁴⁴ J. Morris, 'In the market of morality', in: D. Colon and N. Hiemstra, *Intimate Economies of Immigration Detention* (Routledge 2016) p. 63.

In order to answer this question I will answer the following sub questions:

- *What are the conditions and the objectives for migration detention in the EU?*
- *Who are the non-state actors in migration detention centres?*
- *How is the privatisation of migration detention viewed in the scholarly and public discourse?*
- *What is the political economy in upholding the detention regime?*

1.3 Methodology and delimitation

In my research I will use an interdisciplinary method. This means that I will use literature, reports and papers ranging from numerous academic disciplines such as anthropology, ethnography, as well as social and political science and relate them to the laws of migration. These sciences provide empirical studies and nuances that can be used within the legal studies in relation to the detention of migrants. The empirical material will be used to describe the image of migration detention today, with focus on outsourcing.

There are many interesting and important discussions to be had on this subject. The deprivation of freedom is an important issue and there are many ethical, legal and political questions to be examined on migration detention in general. There are possible issues, that will also become clear in this thesis, with migrant detention in itself regardless of the actor and this should not be overlooked. However, due to the limits in time and length I will focus on the legal issues arising from privatisation of migrant detention centre.

For the purpose of this thesis I will use literature on migration detention in particular, but also on the migration regime as a whole. The literature found on the migration industry in general is quite substantial, although framed differently.⁴⁵ Although the privatisation of the migration industry has

⁴⁵ See for example T. Gammeltoft-Hansen and N. Nyberg Sørensen (2013); R. Andersson, *Illegality Inc.* (Chicago, University of Chicago, 2014); R. Hernández-León, *Metropolitan Migrants: The Migration of Urban Mexicans to the United States* (University of California press 2008); D. Fernandes, *Targeted: Homeland Security and the Business of Immigration*

increasingly become of interest in the scholarly arena, the main focus so far within the control industry has been the border security market. This will also be used in order to identify trends that can be applied on the migration detention regime.

A majority of the literature available on privatisation of detention is focusing on the US, the UK and Australia. The reason for this being that they are countries with large migration detention capacity and have extensively privatised their migration detention centres. I have chosen to limit my research to the privatisation of detention centres in EU, as this is a relatively unrepresented area in previous research. The privatisation of the detention regime is not, yet, widely spread in the EU. However, policies and technologies of security and migration tend to migrate from one point to another and states copy each other's practices. This is made evident by the involvement of multinational corporations and security companies that are active in the migration regime in several countries globally. Betts argues that the migration industry is not only active within a particular state, but that the 'global migration governance is polycentric, involving a range of public and private actors'.⁴⁶ Even though most clear practices are from outside the EU, with the UK as an exception, they are still illuminating a trend in practice and have certainly been reflected in the EU although it has not grown to the same size. Literature and examples will therefore be drawn from the detention regime globally as well.

As a site of investigation the UK will be of great importance. The UK was the first country in Europe to privatise migrant detention centres. It is also has one of the largest migrant detention capacities in Europe. Following this the UK has been covered in scholarly work and will be valuable for my research. Apart from the UK, scholarly work on privatisation of detention within the EU is limited. As such much of my empirical material regarding countries in the EU compose of reports from NGOs as well as news publications. The limitation of countries in this paper is made due to where

(Seven Stories Press, New York, 2011).

⁴⁶ A. Betts, 'The migration industry in global migration governance', in: T. Gammeltoft-Hansen and N. Nyberg Sørensen (eds.), *The Migration Industry and the Commercialization of International Migration* (Routledge, 2013) p. 58.

information of privatisation was available.

As far as the laws concerned I will use a dogmatic legal research method. The legal dogmatic method entails the systematisation and interpretation of relevant legal sources to discern the meaning of the law.⁴⁷ Namely I will look into the relevant sources of law and the interpretations of the law. As I have limited my study geographically to the EU the main focus will be the regional regulations as to under what circumstances and conditions detention is allowed. This includes EU legislation as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR)⁴⁸. The main relevant legislative material will be Regulation No 604/2013 (hereinafter the Dublin Regulation)⁴⁹, the Directive 2008/115/EC (hereinafter Return Directive)⁵⁰, the Directive 2013/32/EU (hereinafter the Asylum Procedure Directive)⁵¹ and the Directive 2013/33/EU (hereinafter the Reception Conditions Directive)⁵² as these acts set out the terms for detention are regulated. The European Court of Human Rights (hereinafter ECtHR) has stated that the ECHR is to be interpreted in light of its present-day conditions and in a manner that give practical effect to the rights enshrined in the treaty.⁵³ The relevant articles in the ECHR will be analysed along with relevant decisions from the ECtHR. In order to show on objectives and the current developments in the EU I will also analyse press releases, policy documents and statements from different EU bodies.

⁴⁷ C. Sandgren, *Rättsvetenskap för uppsatsförfattare – ämne, material, metod och argumentation* (3rd ed. Nordstedts, Juridik Stockholm, 2015) p. 43-45.

⁴⁸ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.

⁴⁹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31.

⁵⁰ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, OJ L. 348/98.

⁵¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60.

⁵² Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96.

⁵³ ECtHR, *Airey v. Ireland*, app. no. 6289/73, 9 October 1979, paras. 24 and 26.

Worth noting is that not all countries in the EU are covered by the directive and regulations above. The UK and Ireland, for example, opted out of the Return Directive, the Asylum Procedures Directive and the Dublin Regulation.⁵⁴ Further the methods to reach the goals prescribed in the directives are up to the member states to decide. It will therefore at times be relevant to bring up national legislation.

The fundamental rights to ‘freedom of movement’⁵⁵ as well as ‘liberty and security’⁵⁶ are covered in several international treaties and conventions. I will therefore also turn to relevant international law. The sources of international law are international conventions, international customary law and general principles.⁵⁷ The main sources that I will use in international law, as they have the most relevance, are the Convention Relating to the Status of Refugees (hereinafter the 1951 Refugee Convention)⁵⁸, International Covenant on Civil and Political Rights (hereinafter ICCPR)⁵⁹ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention against Torture)⁶⁰.

To fulfil my research goal I will deploy certain conceptual framework. This involves the concept of ‘the migration industry’ and the concept ‘crimmigration’, both of which will be presented below. The former account for the actors and context of which the thesis takes place, and the latter will be a useful tool to explain the underlying rationales of the political economy of

⁵⁴ In accordance with Protocol No 21 and 22, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

⁵⁵ See, for example, art. 12, International Covenant on Civil and Political Rights (ICCPR) on the right to freedom of movement and choice of residence for persons lawfully staying in the territory, as well as the right to leave any country, including one’s own. See, also, art. 12, African Charter on Human and Peoples’ Rights, 1981 (ACHPR); art. 22, American Convention on Human Rights, 1969 (ACHR) and art. 2, European Convention on Human Rights (ECHR).

⁵⁶ See, for example, art.3 and 9, Universal Declaration of Human Rights (UCHR); art. 9, ICCPR; art. 6, ACHPR; art. 7, ACHR; art. 6, ECHR; art. 6, Charter of Fundamental Rights of the European Union (CFREU).

⁵⁷ Art. 38 (1), Statute of the International Court of Justice, 26 June 1945, San Francisco.

⁵⁸ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

⁵⁹ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁶⁰ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

detention centre as well as the reproduction of the migration detention regime.

1.3.1 The migration industry

Gammeltoft-Hansen and Nyberg Sørensen suggest three subcategories for the migration industry; facilitation, control and rescue, and a definition that puts the migration industry as 'the array of non-state actors who provide services that facilitate, constrain or assist international migration.'⁶¹

The migration industry is not a new phenomena as such. As Gammeltoft-Hansen and Nyberg Sørensen writes 'scholars in transnationalism have shown, migrants have probably always forged transnational and multi-stranded social relations and exploited business opportunities linking together origin and destination countries.'⁶² They draw on examples from migrants travelling to the US in the second half of the nineteenth century. The captain on the ships heading to the US kept valuables from being stolen on the journey for a sum of money and were responsible, at their own cost, to re-transport inadmissible passengers.⁶³

However, the migration industry today has become fundamentally embedded in current migration regimes. The academic concept of the migration industry dates back to 1977 as Harney coined the term 'commerce of migration'.⁶⁴ Salt and Stein wrote about the concept of international migration as a 'global business'.⁶⁵ Cohen introduced the concept of migration industry and defined it as 'comprising private lawyers, travel agents, recruiters and fixers and brokers who sustain links with origin and destination countries'.⁶⁶ Castles and Miller placed the migration industry in migration systems theory, understanding it as 'a number of intermediate mechanisms relating the micro to the macro structures of migration'.⁶⁷ However up until this point, the focus was mainly on illicit and/or informal activities.

Hernandez-León broadened the scope by also including formal and legal

⁶¹ T. Gammeltoft-Hansen and N. Nyberg Sørensen (2013) p. 6-7.

⁶² Ibid. p. 7.

⁶³ Ibid.

⁶⁴ Ibid. p .4-5.

⁶⁵ Ibid. p. 5.

⁶⁶ Ibid.

⁶⁷ Ibid.

activities and expanding the number of actors. He defines the migration industry as 'the ensemble of entrepreneurs who, motivated by the pursuit of financial gain, provides a variety of services facilitating human mobility across international borders'⁶⁸.

The definition by Hernandez-León serves as a platform for Gammeltoft-Hansen and Nyberg Sørensen that attempts to nuance the concept the migration industry and adds two perspectives. First, 'the control providers' is added as a part of the industry. By this they refer to private contractors that perform migration control in different forms; detention centres, border security and deportation. They point out that these actors are often in close connection to governments as opposed to the facilitating side of the migration industry.⁶⁹ Second, they propose to include actors who are not (solely) motivated by financial gain. This includes non-state actors such as NGOs, social movements, faith based organisations and migrant networks. This last category of actors has been named by Laura María Agustín as 'the rescue industry' and is built up by for example different initiatives providing information on the risks of irregular migration, projects helping trafficked women and children and also the growing phenomena of NGOs managing different parts of the asylum process.⁷⁰

The concept of 'the migration industry' as formulated by Gammeltoft-Hansen and Nyberg Sørensen will serve as a base for my thesis. I will limit the thesis to the 'control providers', and more specifically the migration detention regime. Gammeltoft-Hansen and Sørensen sets up three aspects of the migration industry to analyse it; the actors, the roles they have as well as the structures surrounding and giving rise to the migration industry. Gammeltoft-Hansen and Nyberg Sørensen writes that '[u]nderstanding the rise of the migration industry also demands an appreciation of the political economy surrounding efforts to regulate migration and changing migratory patterns.'⁷¹ This focus on the migration industry by identifying the actors, their role and the

⁶⁸ R. Hernández-León (2008) p. 154.

⁶⁹ T. Gammeltoft-Hansen and N. Nyberg Sørensen (2013) p. 6.

⁷⁰ See L. M. Agustín, *Sex at the Margins: Migration, Labour and the Rescue Industry* (Zed Books 2008).

⁷¹ T. Gammeltoft-Hansen and N. Nyberg Sørensen (2013) p. 12.

larger structures embedded in the regime will allow to search for trends, practices and rationales as well as identifying problems that could arise around the privatisation of migration detention.

1.3.2 Crimmigration

The criminalisation of migrants is a multi-layered phenomena where different practices influence and build on each other. Palidda defines the criminalisation of migrants as 'all the discourses, facts and practices made by the police, judicial authorities, but also local governments, media, and a part of the population that hold immigrants/aliens responsible for a large share of criminal offences.'⁷² The criminalisation of migrants is often referred to as 'crimmigration', a term coined by Stumpf.⁷³ Although Stumpf mainly focused on the legal aspects i.e the intersection between criminal law and migration law, there has been a trend within the crimmigration to also include a discursive aspect.⁷⁴ Authors have also shown a link between the discourse of crimmigration and policy making which shows the importance of involving it in the analysis.⁷⁵

Following this there are two manifestations of crimmigration I wish to bring up to be used in this thesis. The first is the discursive aspect and the second is the intersection between criminal law and migration law.

The discursive aspect of crimmigration has many levels. Parker writes that 'the discursive dimension of criminalisation takes a number of different angles and approaches, reflecting the multi-layered (linguistic, social, cultural economic and political) factors that affect the way in which immigration is framed and perceived in European societies.' On a linguistic level the term

⁷² S. Palidda, 'A Review of the Principal European Countries', in: S.Palidda (ed.), *Racial criminalization of migrants in 21st Century* (Farnham: Ashgate 2011).

⁷³ See J. Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power' (2006) American University Law Review vol. 56 no,2.

⁷⁴ See for example J. Parkin, 'The Criminalisation of Migration in Europe: A State-of-the-Art of the Academic Literature and Research' (2013) CEPS Paper in Liberty and Security in Europe, no 13.

⁷⁵ See A. De Giorgi, 'Immigration control, post-Fordism, and less eligibility: A materialist critique of the criminalization of immigration across Europe' (2010) *Punishment & Society*, Vol. 12, No. 2, pp. 147–167; B.A. Vollmer, 'Policy Discourses on Irregular Migration in the EU – 'Number Games' and 'Political Games'' (2011) *European Journal of Migration and Law*, Vol. 13, pp. 317–339.

‘illegal migrant’ has been widely discussed.⁷⁶ It is still widely used in official and unofficial discourse despite its problematic connotations. As Maneri states, the ’use of ”collective categories” that lack any descriptive coherence or precision, but are nevertheless replete with connotations and implicit associations (“clandestine”, “gypsies”, “extracomunitari”, “Muslims”, etc.) provide the raw material for the discourse on immigration.’⁷⁷ The term ‘illegal migrant’ is a good example of such a collective category. There are evident implications of how the use such language can create a stigma on and a suspicion of all migrants. An EU-funded study show that terms such as ‘undocumented’, ‘irregular’, ‘semi-compliant’ and ‘non-compliant’ are more value neutral and to prefer.⁷⁸

Further, the discursive framing of migrants as threats by officials, politicians and the media in the EU is evident. The framing of migrants as threat aspect is present in all European countries in relation to migration. The focus of what they are a threat to can vary from socio-economic welfare, security and national identity and can lead to specific influences in policy making.⁷⁹ For the media this can also be a way to increase profit margins by emphasising the threatening elements and by using the frame of emergency. Playing on public's fear of crime and social instability the ‘illegal immigrant’ becomes a useful ‘enemy’ figure.⁸⁰ Arguments have been made that migration could offer a grateful platform for politicians as the simplification of the issue makes it comprehensible. Parkin suggests that ’talking tough on illegal

⁷⁶ See for example B. Andersson, *Us and Them?: The Dangerous Politics of Immigration Control* (Oxford University Press 2013).

⁷⁷ M. Maneri, ‘Media discourse on immigration: Control practices and the language we live’, in: S.Palidda (ed.), *Racial criminalization of migrants in 21st Century* (Farnham: Ashgate 2011), p. 110.

⁷⁸ The ‘Undocumented Worker Transitions project’ funded by the 6th Framework Programme of the European Commission’s DG Research and was coordinated by the Working Lives Research Institute at London Metropolitan University with partners in seven member states. See https://ec.europa.eu/anti-trafficking/eu-projects/undocumented-worker-transitions_en.

⁷⁹ CLANDESTINO (Undocumented Migration: Counting the Uncountable Data and Trends Across Europe) was an EU funded collaborative research project financed under the EU’s 6th Framework Programme. The project aimed to support policymakers in designing and implementing appropriate policies regarding undocumented migration. See <http://research.icmpd.org/projects/irregular-migration/clandestino/>.

⁸⁰ J. Berkhout, ‘Changing Claims and Changing Frames in the Politics of Migration in Western Europe, 1995 – 2009’ (2012) SOM Working Paper No. 2012-09, p. 7. <<http://dx.doi.org/10.2139/ssrn.2168713>> accessed 7 March 2017.

immigration is more straightforward for instance than explaining/distinguishing a party's economic policies or stance on foreign affairs.⁸¹

As described in the background, there is a connection between migration and the increased securitisation. Security professionals and security agencies are driving the discursive construction of migrants as a 'risk' category.⁸² In a EU context the opening of the internal borders, as noted in the background, increasingly enhanced the connection between security and migration. The establishment of new European security agencies developed official EU discourse that linked migration to a number of threats such as human smuggling, human trafficking, terrorism.⁸³ The result is that the securitisation of migration recreates migrants as security threats.⁸⁴ They are framed by security agencies, such as Frontex and now also private security companies involved in the development of security strategies, and given weight and legitimacy as the actors that propagate them hold an established position within the deciding bodies and with a (supposed) extensive knowledge.⁸⁵

Although migration law often lies under the administrative law, some similarities can be seen between criminal and migration law as they are both systems of inclusion and exclusion.⁸⁶ Further both the separation of the criminal from the rest of the society and the exclusion of non-citizens from a society are by necessity actions of the state, as there is a need for a sovereign power to make these decisions. The second manifestation of crimmigration is the increased intersection between criminal law and migration management.

There are two categories of action related to migration that has been criminalised. The first one is acts that only can be committed by a non-citizen

⁸¹ J. Parkin (2013) p. 15.

⁸² See for example Frontex, 'Risk Analysis for 2017' (2017) <http://frontex.europa.eu/publications/?c=risk-analysis>.

⁸³ J. Parkin, 'EU Home Affairs Agencies and the Construction of EU Internal Security' (2012) CEPS Liberty and Security in Europe Papers, Centre for European Policy Studies, Brussels, p. 3.

⁸⁴ See for example: J. Huysmans, *The Politics of Insecurity: Fear, Migration and Asylum in the EU* (Abingdon: Routledge, 2006); Stumpf, J 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power' (2006) American University Law Review vol. 56 no, 2. <<https://ssrn.com/abstract=935547>> accessed 7 March 2017.

⁸⁵ J. Parkin (2013) p. 6.

⁸⁶ J. Stumpf (2006) p 380.

that can include irregular entry and/or stay. As of 2011 17, of the then 27, Member States is considering irregular border crossing or irregular stay a criminal offence, usually punishable by fines and detention.⁸⁷

The second category, the facilitating of irregular migrants, can include assisting illegal entry and employing irregular migrants. Assisting illegal entry includes carrier liability penalties for transporting migrants without the right travel documents or visas.⁸⁸ It can also be criminal networks smuggling migrant over borders for profit, or a civilian helping someone to safety for humanitarian reasons. In Germany and the Netherlands there are also some laws obliging service providers and private agents to report irregular migrants to the authorities.⁸⁹ These ‘duties to report’ constitute obligations under civil law, and only in rare cases lead to criminal penalties. According to Dutch law there is an obligation for persons who shelter migrants in an irregular situation to inform the authorities, and a breach of this can lead to a fine of 3,350 euro or 6 months imprisonment.⁹⁰

By describing the processes of crimmigration, in the context of migrant detention in particular, I wish to examine how this creates a rationale for the use of migration detention. The concept of crimmigration will be useful when investigating the reasons for detention. It also becomes evident how it works in two directions simultaneously; the use of detention criminalises migrants and the criminalisation of migrants in turn affect the detention regime.

1.4 Terminology

Migrant detention: The Global Detention Project (GDP)⁹¹ defines migration detention as: ‘[t]he deprivation of liberty of non-citizens for reasons related to

⁸⁷ European Union Agency for Fundamental rights (FRA), *Fundamental rights of migrants in an irregular situation in the European Union* (Luxembourg, Publications Office of the European Union, 2011) p. 42.

⁸⁸ See the example of flight carriers that are subject to fines if transporting migrants without the proper documentation; Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

⁸⁹ FRA (2011) p. 42

⁹⁰ Ibid.

⁹¹ The Global Detention Project (GDP) is a nonprofit research centre based in Geneva that investigates the use of immigration-related detention as a response to global migration.

their immigration status.' As Flynn points out this definition is state-centred, as there is a need of a sovereign power able to grant or retract both citizenship and status. However, it does not necessarily mean that the state is the actor.⁹² Alston writes that 'negative and euphemistic terms' like non-state actor 'do not stem from language inadequacies but instead have been intentionally adopted in order to reinforce the assumption that the state is not only the central actor, but also indispensable and pivotal one around which all other entities revolve'.⁹³ Following this, an argument can be made that migration detention only can happen as a result of the existence of the Westphalian state system.⁹⁴ The definition is therefore still valid when talking about non-state actors.

In order to have a clear understanding of the definition there are two other aspects of the definition that needs to be addressed. Firstly, the concept of 'deprivation of liberty' can be interpreted in different ways.⁹⁵ For the purpose of this thesis however I will use a definition covering only facilities that physically prevent people from leaving. Secondly, the definition does not make a difference between criminal incarceration and administrative detention. As Flynn points out, this is intentional as a more narrow definition would not cover the fact that many countries within the modern detention regime criminalises migrants on the sole basis of their status.⁹⁶ With that pointed out, however, this thesis will focus largely on detention on administrative grounds as the majority of people detained on status-related issues are placed in civil detention.

The definition used in this thesis for migrant detention therefore could be described as to situations where a non-citizen is physically hindered to leave a place for reasons related to their immigration status. 'Detention' and 'migration detention' will be used interchangeably. Similarly the use of 'detainee' will refer to a person in migration detention.

⁹² M. Flynn, 'Detained Beyond the Sovereign: Conceptualising Non-State Actor Involvement in Immigration Detention', in: D. Colon and N. Hiemstra, *Intimate Economies of Immigration Detention: Critical Perspectives* (Routledge 2016b) p. 17.

⁹³ P. Alston, *Non-state actors and Human Rights* (Oxford: Oxford University Press 2005) p. 3.

⁹⁴ M. Flynn (2016b) p. 17.

⁹⁵ Ibid. p. 18.

⁹⁶ Ibid.

Migrant: The main populations covered by the scope of this thesis are asylum seekers and persons who have entered or stayed in a country without the right to do so. The latter group will be referred to as ‘irregular migrants’. However, for the purpose of this thesis I will use ‘migrant’ and in this include both include asylum seekers and irregular migrants in this definition. Where necessary to point to differences in legal framework I will separate them.

1.5 Outline

Chapter 2 will start off by giving a short outline of the emergence of the current migration regime within the EU, with the focus on detention.

Chapter 3 will provide an overview of the current picture in the EU with relation to the privatisation of detention centres. This will include identifying the non-state actors involved in the detention regime. This will be with regards to both where the operation or management of detention centres are privatised, and where certain services within is privatised. It will also be of relevance to account for where the actors involved are active on other areas of the migration industry or in other countries.

Chapter 4 will account for the legal framework in the EU and for the conditions of migration detention including who can detain, how they can detain, when they can detain and for how long they can detain someone for migration related purposes.

Chapter 5 will move on to describing practices of privatisation and the criticism expressed. I will have my main focus on the privatisation and its consequences, but as some problematic are inherent within the detention regime in itself this will also be addressed. The chapter will address problems that can occur where detention is privatised as well as account for the underlying rationale of detention centres in general and privatisation in particular. The chapter will also analyse the legal issues that can arise from the privatisation of migration detention.

In *Chapter 6* I will bring together my findings and drawn conclusions on the different effects privatisation of migration detention might have.

Finally, in *Chapter 7* I will provide my own view of the situation and

reflect over questions that need to be answered.

2 The emergence of the current migration regime in the EU

2.1 The start of the free movement for some..

The Treaty Establishing the European Community of 1957 (hereinafter ECC Treaty)⁹⁷ gave freedom of movement to economically active nationals of the member states, but it also gave the member states the right to deny entry to for reasons of ‘public policy, public security or public health’.⁹⁸ The ECC Treaty was not clear on all the formalities around the exercise of the freedom of movement, which meant that member states retained a discretion to detain and remove foreigners without the qualification to enter or stay in the country, EU-citizens included. To ensure the free movement of nationals of member states three important pieces of legislation was put into place. In 1964 Directive 64/221 installed restrictions on when a national of a member state and their family can be expelled with regards to public policy, public security or public health. For example this directive states that the expiry of a passport used to enter the country is not grounds for expulsion. Neither is criminal conviction, in itself, such a ground.⁹⁹ As detention had not been explicitly allowed, but merely used as a measure in relation to deportation, this directive infringed on the possibilities to detain member state nationals. Expulsion is only allowed when based on the ‘personal conduct’ of the person.¹⁰⁰

In 1968 Directive 68/360/EEC took away all detailed examination at the border for nationals of member states stating that they should be let in on the show of a valid passport, and should not be asked to show a visa which created freedom of movement across the internal borders of the EU for member

⁹⁷ Treaty Establishing the European Community (Consolidated Version), Rome Treaty, 25 March 1957.

⁹⁸ ECC Treaty, art. 39. See also ECC Treaty, art. 43.

⁹⁹ Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, art. 3(2) and 3(3).

¹⁰⁰ Ibid. art. 3(1).

states.¹⁰¹ The same year Regulation 1612/68 gave enhanced protection against discrimination for migrant workers and their families as well as the right for non-EU citizen family members to join EU-migrant workers.¹⁰² These provisions, given the supremacy of EU law, were all important in the disruption of the traditionally territorial sovereignty within the EU.¹⁰³

In order to ensure the free movement of the nationals of the member states the European Court of Justice (ECJ) continued with a series decisions to give the EU migrant a new constitutional status within EU law.¹⁰⁴ In the case of Boucheraeu the court stated that deportation was allowed only if ‘there was a genuine and sufficiently serious threat to the requirements of public policy’.¹⁰⁵ However, EU-citizens who did not fall within the EU free movement law, those not economically active, could still be subject to deportation.

The Maastricht Treaty of 1992 introduced the EU-citizenship giving further power to the status and free movement of the nationals of member states.¹⁰⁶ In 2002 the Baumbast case confirmed the fundamental right of residence in other member states solely by having a EU-citizenship.¹⁰⁷ The final step to completely eliminate the detention of EU-migrants for migratory purposes was in the Oulane case where it was stated that administrative reasons relating to migration control was not enough, but there had to be a core security justification such as that the migrant would commit a criminal act.¹⁰⁸ Following this Wilsher argues that ‘whole idea of “unauthorized” migration has disappeared for EU citizens. They are entitled to move across borders. They cannot be considered a “security” threat, justifying incarceration, by their presence alone. The removal of this coercive power for one group challenges,

¹⁰¹ Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257/13. See especially art. 3.

¹⁰² D. Wilsher (2012) p 174.

¹⁰³ Ibid. p. 173.

¹⁰⁴ Ibid. p. 176.

¹⁰⁵ Case C-30/77 *Régina v. Pierre Bouchereau* [1977] ECR 199, para. 35.

¹⁰⁶ Treaty on European Union (Maastricht text), July 29 1992 O.J. C191/1, art. 17-18.

¹⁰⁷ Case C-413/99 *Baumbast and R v. Secretary of State for the Home Department* [2002] ECR I-709, para. 94.

¹⁰⁸ Case C-215/03 *Salah Oulane v.air Minister voor Vreemdelingenzaken en Integratie* [2005] ECR I-1215, para. 40-42.

in both practical and philosophical terms, its extensive use to establish immigration status in general.¹⁰⁹

2.2 ... but not for others

The first common policy applied with regards to third country nationals was the Schengen Agreement¹¹⁰ of 1985 which created the first framework for cooperation between the Member States on migration issues. This were the first steps to open up the internal border within the EU. Wilsher writes that with the Schengen Agreement came the development of a ‘powerful security and policing apparatus directed at non-EU citizens.’¹¹¹ This entailed policing of external borders, a stricter border control and a common information system between the states where migrants could be registered and excluded on security grounds. The Amsterdam Treaty incorporated the Schengen treaties and rules into EU law, obliging the member states to follow them. The internal borders were removed completely and more countries joined the agreement.

In art. 61 of the ECC Treaty it is made clear the connection between internal freedom and external constraint by stating that the council shall take ‘[...] measures aimed at ensuring the free movement of persons [...] in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration [...].’ At the Tampere summit meeting of 1999 the European Council further developed the EU’s objectives in the field of migration. This included for example common policies on asylum and a strong action against irregular migration across the EU’s external borders.¹¹² This was the start of an increasingly hostile and security-based rhetoric towards migrants and asylum seekers from outside the EU emerged. A trend fuelled on by the war on terror.¹¹³

¹⁰⁹ D. Wilsher (2012) p. 179.

¹¹⁰ 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, 19 June 1990 O.J.L 239.

¹¹¹ D. Wilsher (2012) p. 180.

¹¹² D. Wilsher (2012) p. 181.

¹¹³ Ibid. p 182.

3 Privatisation of detention in the EU

Looking at numbers regarding migration detention centres and the detention capacity¹¹⁴, the detention regime appears to be expanding. In the US the number of detention beds have increased from 7500 in 1995 to over 30000 in 2009.¹¹⁵ In Europe the 324 detention centres in 2000 increased to 473 by the year 2012.¹¹⁶ There has also been an increase in the involvement of private companies in the migration detention regime. Bacon notes that '[p]rivate corporations have arisen as an important institution involved in the detention of non-citizens, as immigration law enforcement has increasingly been privatised.'¹¹⁷ This chapter will aim to give an overview of the current state of migration detention in the EU today. In certain countries the whole management of the detention centres is privatised, whilst in other countries only certain functions and services related to the detention centres are given to private companies.

3.1 UK

The detention capacity in the UK has expanded considerably in the last couple of decades. In 1993 there were 250 places available. The number rose to 2,665 by the end of 2009.¹¹⁸ In the beginning of 2015 3,915 individuals can currently be detained at any given time.¹¹⁹

¹¹⁴ The number of people that could be detained at any given time within a country's detention facilities.

¹¹⁵ M. Flynn (2016a) p. 72-73.

¹¹⁶ Ibid. p. 73.

¹¹⁷ T. Baird, 'Who Is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations' (2016) Global Detention Project Working Paper No. 11, p 10. <<https://www.globaldetentionproject.org/who-is-responsible-for-harm-in-immigration-detention-models-of-accountability-for-private-corporations>> accessed 7 March 2017.

¹¹⁸ C. Bacon, 'The evolution of immigration detention in the UK: the involvement of private prison companies' (2005) Refugee Studies Centre, Oxford Department of International Development, p. 2.

¹¹⁹ The All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration (APPG), 'The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom' (2016) p. 15. <<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>> accessed 7 March 2016.

The UK was the first country in Europe to privatise migrant detention. Currently the majority of the 'Immigration Removal Centres' (IRCs) in the UK are managed by private companies. Four are run by the state and seven by private companies; G4S, GEO Group, Mitie, Serco and Tascor.¹²⁰ These multinational companies work in a range of different fields and some of them have many years' experience in carrying out different tasks that traditionally have been considered core functions of the State. G4S, GEO Group and Serco have also been active in the US and Australia that have large detention capacities.

In August of 1970 the private security company Securior was contracted to manage two minor migration detention facilities, one near the Heathrow airport and one near the Liverpool airport.¹²¹ By 1988 almost half of all detained migrants were in private migration detention facilities. The actors in the private migration detention facilities were often the same companies that were involved in the operation of the prisons privatised in the same time period.¹²² In 1991 Group 4 Falk won the contract for the first major privately run migration detention centre, Campsfield Detention Centre in Oxfordshire. At that time Group 4 Falk ran two offshore detention centres in France.¹²³

In 2004 Group 4 Falk and Securicor merged and became G4S, a now well known actor in the business of migration detention globally. G4S is active in over 100 countries and employ with 610,000 people.¹²⁴ They had a recorded revenue of 6.4 billion pounds in 2015.¹²⁵ They provide a range of services around the world.

In the UK G4S is a prominent actor in the detention centre business. From 2009 to 2014 G4S had contracts for the management of Brook House IRC and Tinsley House IRC, worth 191.5 million pounds. As of June 2016

¹²⁰ L. Arbogast (2016) p. 22.

¹²¹ G. Menz, 'The Neoliberalized State and the Growth of the Migration Industry' in: T. Gammeltoft-Hansen and N. Nyberg Sørensen, *The Migration Industry and the Commercialization of International Migration* (Routledge 2013) p. 117.

¹²² Ibid. p. 118.

¹²³ Ibid.

¹²⁴ G4S, 'Where we operate', G4S Website, <www.g4s.com/en/Who%20we%20are/Where%20we%20operate/> accessed 20 February 2017.

¹²⁵ G4S, 'Financial Statement', G4S Website, <www.g4s.com/en/Investors/Financial%20Statements/> accessed 20 February 2016

they are still operating these facilities. In 2011, G4S also won a four year contract for Cedars Pre-Departure Accommodation (PDA) to a value of 25 million pounds. The facility hosted families in relation to their deportation, and the charity Barnardo's was providing the welfare support. In 2016 it was announced that Cedars PDA was to be closed and a new facility will be opened in 2017. In February 2017 G4S was announced the winner of the contract stretching for three years with a possibly two years extension. Barnardo's is no longer a part of the contract but G4S will also provide support to the families.¹²⁶

Another big actor in the migration detention business in the UK is Serco. The British company offers a large range of services globally. This includes transport and control of public transportation, military contracts, management of detention centres and prisons.¹²⁷ Serco managed the Colnbrook IRC between 2004-2014 under a 213 million pound contract. In 2014 they won a 7-year contract for Yarl's Wood IRC worth 70 million pounds. When describing their services at Yarl's Wood on their website they write that they '[...] reduce the cost of delivering immigration services whilst continuing to provide the highest standards of care to each individual detainee.'¹²⁸

Mitie is a company originally specialised in maintenance and cleaning, but they have now expanded their services to incorporate catering, fire safety and pest extermination amongst other things.¹²⁹ In 2014 they won the joint contract for Colnbrook IRC and Harmondsworth IRC from 2014-2022, with a total worth of 180 million pounds.¹³⁰ In 2016 the Harmondsworth IRC was criticised by the prison inspectorate for being dirty, rundown and unsanitary during an unannounced inspection. The Prison Inspector said that '[t]he environment in the centre had been allowed to deteriorate to an unacceptable

¹²⁶ A. Travis, 'G4S to take over welfare support for families facing deportation' *The Guardian* (9 February 2017)<www.theguardian.com/uk-news/2017/feb/09/g4s-welfare-support-families-children-deportation-gatwick> accessed on 10 February 2017

¹²⁷ Serco, <www.serco.com> acccesed 25 February 2017.

¹²⁸ Serco, 'Secure Immigration Detention' <www.serco.com/uk/sector-expertise/immigration/secure-immigration-detention> accessed 20 February 2017.

¹²⁹ Mitie, 'Specialist services' <www.mitie.com/services/specialist-services> accessed 20 February 2017.

¹³⁰ Mitie, 'Mitie awarded £180m contract with the Home Office' *Mitie Press release* (11 February 2014) <www.mitie.com/news-centre/regulatory_announcements/2014/1898898> accessed 17 February 2017

level [...]. The standard of repair, cleanliness and hygiene in the residential units was unacceptably poor.¹³¹

The Geo Group was created in 1988 and manages a number of prisons and migrant detention centres in the US, Australia and South Africa. They describe themselves as ‘a world leader in providing prison, detention and escorting services to governments around the world with over 72,000 beds across 90 different facilities on 4 continents.’¹³² The Geo Group runs the Dungavel IRC in the UK under an eight year contract starting in 2012.¹³³

Tascor (formerly Reliance Secure Task Management) was previously a subsidiary of the Reliance security group working within in the UK criminal justice sector. In August 2011, the company was bought out by the multinational Capita and was renamed Tascor. Between 2011 and 2015 Tascor had a contract, at a value of 6.8 million pounds, with the Home Office to escort migrants during their deportation. The contract included the management of 37 Non Residential Short-term Facilities located close to ports, airports and various entry points to the UK. As of 2016 the contract was still in the hands of Tescor, although a new call for tender was launched.¹³⁴

In April 2013, access to health care for detained migrants was entrusted to the National Health Service (NHS), instead of the Home Office. In certain detention centres, the NHS further outsource medical services to private companies. In 2016, medical services in Brook House IRC, Tinsley House IRC and Yarl’s Wood IRC were outsourced to G4S.

3.2 Italy

In Italy the Red Cross is operating ‘Identification and Expulsion Centers’ (CIE). It provides services for human needs such as catering, health,

¹³¹ HM Chief Inspector of Prisons, ‘Report on an unannounced inspection of Heathrow Immigration Removal Centre, Harmondsworth site, 7–18 September 2015’ (2016) para. S39. <<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/02/Harmondsworth-web-2015.pdf>> accessed 7 March 2017.

¹³² The Geo Group UK, ‘Welcome to The GEO Group UK Ltd’ <www.geogroup.co.uk/index.php?Page_ID=2053&Pindex=1&Sindex=1> accessed 20 February 2017.

¹³³ UK Government, ‘Dungracel House IRC’, Contract Finders archive <<https://data.gov.uk/data/contracts-finder-archive/contract/699454/>> accessed 20 February 2017.

¹³⁴ L. Argobast (2016) p. 24.

accommodation, psychosocial support and logistics at a daily rate of 45 Euro per detainee.¹³⁵ As of 2009 the Italian Red Cross was the main private organisation mandated to work in the Italian CIEs. In partnership with the local prefectures they were running CIEs in Turin, Milan, Crotone and Rome. Gradually the Italian state has opened up for more actors.¹³⁶

In 2013 there were eight NGOs and cooperatives involved in supplying services to the Italian CIEs. Although NGOs have been the main actors in administrative detention centres private for-profit companies are now increasingly targeting them. The French company GEPSA (Management of Auxiliary Prison Services) manages 16 prisons and provides services to 10 administrative detention centres in France. Together with Acuarinto, an Italian culture association, the company has progressively become a player in the market of detention centres in Italy. In December 2014, the GEPSA-Acuarinto consortium won the contract to manage the CIE in Rome offering to manage it for a daily amount of 28.80 Euros, instead of the previously 41 Euros. In 2014, GESPA won two new contracts, in Turin and Milan, where they offered a price 20% to 30% lower than those offered by the Red Cross. This marks the start of opening up to private for-profit companies in Italy, and a more industrial approach to the management of the detention centre.¹³⁷

Lunaria, an Italian association, estimates the cost for the Italian State for the migration detention system between 2005 and 2011 to a total of one billion euros. Parallel to the rise in detention budgets, there has been an decrease in the public spending on the reception centres for migrants has fallen. In other words it seems that the Italian government has chosen to focus on incarceration policies for foreign nationals rather than reception and social integration.¹³⁸

¹³⁵ GDP, 'Italy Immigration Detention' (updated November 2012) <<https://www.globaldetentionproject.org/countries/europe/italy>> accessed 1 March 2017.

¹³⁶ M. Flynn and C. Cannon, 'The Privatization of Immigration Detention: Towards a Global View' (2009) A Global Detention Working Paper, p. 9. <<http://dx.doi.org/10.2139/ssrn.2344196>> accessed 7 March 2017.

¹³⁷ L. Arbogast (2016,)p. 45.

¹³⁸ Lunaria, 'An Inhumane Cost: Public spending to combat illegal immigration in Italy' (Rome 2013) p. 11. <http://www.lunaria.org/wp-content/uploads/2013/07/Inhuman_cost.pdf> accessed 7 March 2017.

3.3 Germany

The migration detention practices in Germany are decentralised meaning that each state largely gets to set their own policy as to how and where to detain migrants. This leads to the practices varying from state to state. The big actors that are involved in the operation of, or provide services to, detention centres in Germany are European Homecare, B.O.S.S. Security Service GmbH and Kötter.¹³⁹

In the migration detention centre Eisenhüttenstadt in Brandenburg the public authorities are responsible for the overall management of the centre whilst B.O.S.S supplies security, catering and social assistance.¹⁴⁰ Certain prison facilities used for the administrative detention of migrants employ private security personnel. An example of that is the Büren prison where Kötter provides security and European Homecare provides ‘social services’.¹⁴¹ Serco, active in the migration detention industry in other countries, has also made its way into the German penal institutions by providing services to at least one prison in the state of Hesse.¹⁴²

3.4 France

There are also opportunities for private companies in the day-to-day services of migration detention centres. As of 2004 public authorities in France can use private companies for construction, maintenance and management of different services within the detention centres. Services provided by private actors to migration detention centres include catering, maintenance, hygiene services and distribution of sheets and blankets. Looking at the development between 2010 and 2015 it is clear that certain companies are gaining more and more ground on the market. An example of one these actor is GEPSA, also active in

¹³⁹ GDP, 'Germany mmigration Detention' (updated October 2014) <<https://www.globaldetentionproject.org/countries/europe/germany>> accessed 1 March 2017.

¹⁴⁰ M. Flynn and C. Cannon (2009) p. 6-7.

¹⁴¹ GDP, 'Germany Immigration Detention'.

¹⁴² G. Menz (2013) p. 120.

migration detention centres in Italy.¹⁴³

The construction and renovations of detention centres are also subject to tender for public contracts. The company Bouygues became involved, through its various subsidiaries, in the construction and extension of nearly fifteen detention centres in public-private partnership where the state pays the rent. In 2010, Bouygues won a contract with the Ministry for Defence Bouygues for the extension of the Mesnil-Amelot detention centre. SCREG, a subsidiary of Bouygues, in charge of the construction employed four undocumented workers. They were intercepted by police and subsequently detained in that very centre meaning that the migrants literally built their own prison.¹⁴⁴

3.5 Austria

A number of private companies are working with migrant accommodation and detention centres in Austria including G4S, European Homecare and ORS Service.¹⁴⁵

G4S is responsible for a number of tasks at the Vordernberg detention centre, which opened in 2014. This includes security, psychological care, leisure activities and catering. The police are operating the centre and the Interior Minister has explained that the G4S are only supposed to assist the police, who still wield sovereign power.¹⁴⁶

ORS Service is the dominant player on the asylum seeker accommodation market. In 2012 they won a contract to manage all the new Austrian federal asylum seeker centres. Some autonomous provinces also used the services of ORS for the management of their centres. Amnesty International have criticised ORS Service for its 'inhumane' management of the asylum-seekers' centre in Traiskirchen, close to Vienna.¹⁴⁷ The centre was privatised in 2003, and came into the care of ORS Service in 2012. The centre had 4,500 people in a centre designed for 1,800 and the services were seriously

¹⁴³ L. Arbogast (2016) p. 34-36.

¹⁴⁴ Ibid. p. 34.

¹⁴⁵ GDP, 'Austria Immigration Detention' (updated December 2014)

<<https://www.globaldetentionproject.org/countries/europe/austria>> accessed 1 March 2017.

¹⁴⁶ GDP, 'Austria Immigration Detention'.

¹⁴⁷ BBC News, 'Austria refugee camp branded 'shameful' by Amnesty International' (14 August 2015) <www.bbc.com/news/world-europe-33940654> accessed 20 February 2017.

subpar with regards to access to care and protection of unaccompanied minors.¹⁴⁸

3.6 The Netherlands

In the Netherlands, the security and medical care at detention centres is outsourced to private companies. G4S provides security at all detention centres, while various companies provide medical care. Global Detention Project further indicates that the Schiphol and Rotterdam centres are operated as public-private partnerships, however there are some uncertainties to what extent companies are involved.¹⁴⁹

3.7 Spain

In Spain, closed detention centres, ‘Centro de internamiento de extranjeros’ (CIE), are controlled by the Ministry for the Interior i.e the state, but certain services are privatised. All medical services supplied to CIEs are through agreements with private entities Sermedes and then Clínicas Madrid.¹⁵⁰

The temporary accommodation centres in Spain are called ‘Centro de estancia temporal de migrantes’ (CETI). In The Spanish companies EULEN Seguridad and Serramar Vigilancia y Seguridad signed a contract for 6.5 million euros with the Spanish state for the surveillance of CETIs in the Spanish enclaves of Ceuta and Melilla in Morocco in 2013.¹⁵¹

3.7 Greece

In 2012, the Greek government amended legislation that created the possibility to transfer the responsibility for the surveillance of migrant camps from the

¹⁴⁸ D. Hraby, ‘Austria held thousands of refugees in a squalid camp’, *USA Today* (12 October 2015) <www.usatoday.com/story/news/world/2015/10/12/austria-migrants-global-post/73806236/> accessed 20 February 2017; Amnesty International Germany, ‘Traiskirchen Symptom systematischer Mängel im Umgang mit Asylwerbern’ (13 August 2015) <<https://www.amnesty.at/de/traiskirchen-pa2/>> accessed 20 February 2017.

¹⁴⁹ GDP, ‘Netherlands Immigration Detention’ (updated November 2016) <<https://www.globaldetentionproject.org/countries/europe/netherlands>> accessed 1 March 2017.

¹⁵⁰ L. Arbogast (2016) p. 39.

¹⁵¹ L. Arbogast (2016) p. 40.

Greek police to private companies. The following year, the Minister for Public Order and Citizen Protection announced a call for tenders open to security companies for surveillance in the six migrant detention centres. G4S was one of the bidders on the contracts.¹⁵²

In 2016 G4S also won a contract from the European Asylum Support Office (EASO), responsible for the asylum procedure in the Greek 'hotspots',¹⁵³ in 2016 to be responsible for security of its staff in the Lesbos hot spots. Both G4S and EASO were criticised, and subsequently sued by the Lawyers Association of Mitilini, for preventing migrants from accessing certain areas, including the EASO office, and as such disturbing the asylum application process.¹⁵⁴

4. Regulations around detention

4.1 When can you detain?

The migrant population subject to detention is quite varied. It varies from people entering a country irregularly, people who stay in the country after a denied asylum application or people who stay after their work visa expires. Under international law governments do have the right to protect their national sovereignty. This is however not without limitations. The fundamental rights to 'freedom of movement'¹⁵⁵ as well as 'liberty and security'¹⁵⁶ are expressed in

¹⁵² N. Nielsen, 'Private security firms cash in on guarding EU borders' *EUobserver* (23 September 2013) <<https://euobserver.com/priv-immigration/121454>> accessed 20 February 2017; N. Nielsen, 'Private security firms bid on Greek asylum centres' *EUobserver* (2 April 2014) <<https://euobserver.com/justice/123711>> accessed 20 February 2014.

¹⁵³ 'The hotspot approach' was introduced in Greece in 2015 where EASO, Frontex, Europol and EU Judicial Cooperation Agency work with the authorities to faster identify, register and fingerprint arriving migrants. See, EC, 'The Hotspot Approach to Managing Exceptional Migratoey Flows' <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf>

¹⁵⁴ A. Fotiadis, 'New Security on Greek Islands Reduces Access' *NewsDeeply* (15 June 2015) <www.newsdeeply.com/refugees/community/2016/06/15/new-security-on-greek-islands-reduces-access> accessed 20 February 2014.

¹⁵⁵ See, for example, art. 12 ICCPR; art. 12, African Charter on Human and Peoples' Rights, 1981 (ACHPR); art. 22, American Convention on Human Rights, 1969 (ACHR) and art. 2, ECHR.

¹⁵⁶ See, for example, Universal Declaration of Human Rights (UCHR) art.3 and 9; ICCPR, art. 9; ACHPR, art. 6; ACHR, art. 7; ECHR, art. 6; Charter of Fundamental Rights of the European Union (CFREU), art. 6.

most human rights instruments, international and regional. With detention being an exception to such fundamental rights it must comply with important safeguards. It must be provided for by law and not be arbitrary.¹⁵⁷

International law restricts the possibility of detaining asylum seekers and refugees. Article 31 of the 1951 Geneva Convention states that asylum seekers should not be penalised due to irregular entry or presence ‘provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence’. Art. 31 further states that restrictions on movement are only to be applied to refugees and asylum-seekers if they are necessary and that restrictions only should apply until their status is regularised or they get admission into another country.¹⁵⁸ Article 9 of the ICCPR requires that any deprivation of liberty imposed in an immigration context must be lawful, necessary and proportionate according to the UN Human Rights Committee (OHCHR).¹⁵⁹

In the EU, migration detention must be lawful according to domestic law, EU law and ECHR law.¹⁶⁰ Article 20 of the Return Directive obliges EU Member States to bring into force laws, regulations and administrative provisions necessary to comply with the provisions of the directive and art. 8 (3) in the revised Reception Conditions Directive require that the grounds for detention be accounted for in national law. Art 5 (1) in the EHCR provides that ‘no one shall be deprived of his liberty’ unless ‘in accordance with a procedure prescribed by law’. Subsequently national law must lay down the substantive and procedural rules around detention.

4.1.1 Detention of asylum seekers and pre-expulsion detention

In regards to detention of migrants there are two different legal regimes. The first is covering detention of asylum seekers. The second one refers to third-

¹⁵⁷ ECtHR and FRA, *Handbook on European law relating to asylum, borders and immigration* (Luxembourg: Publications Office of the European Union, 2016) p. 143.

¹⁵⁸ See also art. 26 on the freedom of movement and choice of residence for refugees lawfully in the territory.

¹⁵⁹ See UN Human Rights Committee, *A v. Australia*, no. 560/1993, 30 April 1997, para 9.4-9.5; UN Human Rights Committee, *Shafiq v. Australia*, no. 1324/2004, 13 November 2006, para 7.2-7.3.

¹⁶⁰ ECtHR and FRA, 2016, p. 154.

country nationals in the return process¹⁶¹ due to not having the legal right to stay on the territory of a Member State.¹⁶²

Art. 8 of the Receptions Directive and art. 28 of the Dublin Regulation set out the conditions under which an asylum-seeker can be detained. According to this an asylum seeker can be detained:

- in order to determine or verify the applicant's identity or nationality;
- in order to determine elements of the asylum application, which could not be obtained in the absence of detention, in particular where there is a risk of absconding;
- in order to decide on the applicant's right to enter the territory;
- if detained under the Return Directive, and they have previously had the opportunity to apply for asylum and there are reasonable grounds to believe that he or she is submitting an asylum application merely to delay or frustrate the removal
- when the protection of national security or public order so requires; and
- in order to secure transfer procedures in accordance with the Dublin Regulation when there is a significant risk of absconding¹⁶³

According to art. 8 (2) in the Reception Conditions Directive the detention of asylum seekers can only be made when it 'proves necessary and on the basis of an individual assessment of each case'. Worth noting is that it is not acceptable to detain someone on the sole ground that they are an asylum seeker or a subject to the Dublin Regulation.¹⁶⁴

Art. 15 of the Return Directive sets out the conditions for when persons in return procedures can be detained; in order to prepare return and/or carry out the removal process. Detention is to be used in particular when there is a risk of absconding or of other serious interferences with the return or removal

¹⁶¹ Defined in Return Directive, art. 3 (3), as the voluntary compliance, with obligation, or enforced return to the country of origin, a transit country or a third country to 'which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.'

¹⁶² Return Directive, art. 1 (1).

¹⁶³ See Reception Conditions Directive, art. 8(3)(f); Dublin Regulation, art. 28 (2).

¹⁶⁴ Asylum Procedures Directive, art. 26 (1) resp. Dublin Regulation, art. 28 (1).

process.¹⁶⁵ Decisions taken under the directive must be taken ‘on a case-by-case basis and based on objective criteria’.¹⁶⁶ The risk of absconding is defined as ‘the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond.’¹⁶⁷

Art. 5 (1) of the ECHR protects the right to liberty and security stating that ‘[e]veryone has the right to liberty and security of person.’. The article further sets out an exhaustive list of when, given that it is in accordance with a lawful procedure, the deprivation of liberty is permitted. Art. 5(1)(f) permits the ‘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.’ All the grounds of exception mentioned in art. 5(1) are to be interpreted restrictively.¹⁶⁸ Failure from the state to clearly account for the specific ground used for detention automatically makes the detention unlawful.¹⁶⁹

4.1.2 Last resort and alternatives to detention

In accordance with EU law all alternatives to detention must be exhausted and therefore detention is only to be considered as a last resort. Detention is only to be used if no other sufficient and less coercive measures can be applied.¹⁷⁰ This requires a full consideration of possible alternatives. Art. 8 (4) in the Receptions Conditions Directive oblige states to lay down rules for alternatives to detention in national law. The use of detention also needs to be proportionate to the objective to be achieved.¹⁷¹

Alternatives to detention can include: ’reporting obligations, such as reporting to the police or immigration authorities at regular intervals; the obligation to surrender a passport or travel document; residence requirements,

¹⁶⁵ Return Directive, art. 15.

¹⁶⁶ Ibid. recital 6.

¹⁶⁷ Ibid. art. 3 (7).

¹⁶⁸ See ECtHR, *A. and Others v. the United Kingdom* [GC], No. 3455/05, 19 February 2009.

¹⁶⁹ ECtHR, *Al-Jedda v. the United Kingdom* [GC], No. 27021/08, 7 July 2011, para. 99.

¹⁷⁰ Reception Condition Directive, art 8 (2); Return Directive, art. 15 (1); Dublin Regulation, art 28 (2).

¹⁷¹ Case C-61/11, *El Dridi, alias Soufi Karim*, [2011] ECR I-03015, paras. 29-62.

such as living and sleeping at a particular address; release on bail with or without sureties; guarantor requirements; release to care worker support or under a care plan with community care or mental health teams; or electronic monitoring, such as tagging.¹⁷²

International Detention Coalition (IDC) has found that using alternatives to detention can be up to 80 % cheaper than migration detention. It further shows that compliance rates can be up to 95 % when using alternatives.¹⁷³

4.1.3 Deterrence

As shown above a full assessment of the necessity, proportionality and lawfulness is required as follows from human rights law and instruments as well as EU-law for it to not to be arbitrary. From this it can be concluded that detaining a person with the sole purpose of deterring others from irregular entry and/or stay is not allowed. IDC defines deterrence as ‘any mechanism designed to discourage the performance of an activity not yet accomplished.’¹⁷⁴

Deterrence is often used about in reference to criminal behaviour where punishment of different sorts is meant to work as a deterrent to commit crime. Critiques on this approach entails arguments that it does not take into account broader issues that influence criminal behaviour. There is for example extensive evidence showing that socioeconomic factors are not very receptive to the threat of punishment, and even some evidence suggesting it does not reduce the risk for relapse and might even increase the risk.¹⁷⁵

These types of strategies have made their way into the migration context. IDP claims that ’[t]his approach conceptualises migration as a rational choice that can be discouraged by the threat of major risks or penalties.’¹⁷⁶ Not only is the use of detention solely as a deterrent to prevent irregular entry or stay unlawful, but inefficient. Castles writes that ’[m]igration policies fail because

¹⁷² ECtHR and FRA, 2016, p. 147.

¹⁷³ IDC, ‘There are alternatives (Revised Edition)’ (2015b) p. 75 ff. <<http://idcoalition.org/publication/view/there-are-alternatives-revised-edition/>> accessed 3 March 2017.

¹⁷⁴ IDC, ‘Briefing Paper: Does Detention Deter?’ (2015a) p. 2. <http://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web.pdf> accessed 1 March 2017.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

policy makers refuse to see migration as a dynamic social process linked to broader patterns of social transformation. Ministers and bureaucrats still see migration as something that [can] be turned on and off like a tap through laws and policies.¹⁷⁷

According to the report from IDC more restrictive border controls does not seem reduce the number of irregular migrants to a country. Current migration policies are subsequent to other social, economic and political determinants. Rather than deterring irregular migrants, it leads them onto more dangerous and risky routes. There is little research done specifically on detention of migrants as a deterrent.¹⁷⁸ In a large comparative study it is claimed that 'there is no empirical evidence to suggest that the threat of being detained deters irregular migration, or more specifically, discourages persons from seeking asylum. [...] Detention is largely an extremely blunt instrument to counter irregular migration.'¹⁷⁹

Further research has shown that migrants generally have little knowledge of the migration policies in different countries, but instead rely on the information of smugglers and the country they pick. Gibney states, that 'no western state that uses long-term detention has so far provided anything more than the flimsiest evidence to show that this practice has any effect on asylum seeker numbers'.¹⁸⁰

4.4 Where and how can you detain?

4.4.1 Conditions for asylum seekers and persons in the return process

The conditions of detention for asylum seekers in detention are laid out in art. 10 of the Receptions Conditions Directive and for pre-removal detention in art.

¹⁷⁷ S. Castles, 'Towards a sociology of forced migration and social transformation' (2003) Sociology, 37(1), 12-34. p. 12. <<https://doi.org/10.1177/0038038503037001384>> accessed 10 January 2017.

¹⁷⁸ IDC (2015a) p 3.

¹⁷⁹ UNHCR, 'Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants' (2011) PPLA/2011/01.Rev.1, Geneva, p. v.

¹⁸⁰ M. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004), p. 253.

16 of the Return Directive. Both articles states that the detention should, as a rule, not take place in a prison but specialised detention facilities, and where this is not possible the detained should be kept separately from ordinary prisoners.¹⁸¹ All detainees have the right to health care, that at minimum should include emergency care and treatment of serious illnesses - physical and mental.¹⁸² Both asylum seekers and persons in the removal process should be allowed contact with family members, legal advisors, institutional bodies and relevant NGOs.¹⁸³ For asylum seekers the rights are somewhat extended as they are specifically entitled to communication and visits in conditions that respect privacy.¹⁸⁴ Further, both asylum seekers and persons in the return process should systematically be provided with information regarding the rules applied in the facility as well as their rights and obligations.¹⁸⁵ Asylum seekers should also be allowed access to open air spaces.¹⁸⁶

The ECHR is also relevant in regards to the conditions and place of detention. If not appropriate the conditions may be a breach of article 3 on the prohibition of torture, article 5 on the right to liberty and security or article 8 on the right to respect for private and family life. On determining breaches of the right ECtHR will look at the individual features of the conditions and their cumulative effect. This includes for example where the individual is detained and if there were other options. Other factors that can count in are the number of people detained in the same place, open-air access, access to hygienic facilities and medical assistance.¹⁸⁷

4.4.2 Conditions for vulnerable groups

There are special conditions regarding families, minors and other vulnerable groups. Both the Return Directive and the Reception Condition Directive obliges the state to provide separate accommodation for detained families that

¹⁸¹ Reception Conditions Directive, art. 10 (1) resp. Return Directive, art. 16 (1).

¹⁸² Reception Conditions Directive, art. 19 (1) resp. Return Directive, art. 16 (3).

¹⁸³ Reception Conditions Directive, art. 10 (3) and (4) resp. Return Directive, art. 16 (4).

¹⁸⁴ Reception Conditions Directive, art. 10 (4). Limitations can only be imposed, if allowed in national law, where objectively necessary for the security, public order of administrative management of the detention facility (same article).

¹⁸⁵ Reception Conditions Directive, art. 10 (5) resp. Return Directive art. 16(5).

¹⁸⁶ Reception Conditions Directive, art. 10 (2).

¹⁸⁷ ECtHR and FRA (2016) p 167.

guarantees privacy.¹⁸⁸ Both directives stresses the importance of the best interest of the child as a primary consideration in the context of detaining minors.¹⁸⁹ Further, minors should always only be detained as a last resort and for the shortest time possible and should be given the possibility to engage in leisure activities and recreational activities.¹⁹⁰ Concerning unaccompanied minors, both directives obliges the state to as far as possible provide accommodation with facilities and personnel which take into account the needs of persons their age.¹⁹¹ Article 11 (3) of the Reception Conditions Directive also states that unaccompanied minors should never be detained in a prison, and that they should be kept separate from adults. The Reception Conditions Directive also obliges the states to keep female asylum seekers separate from male applicants in detention, given they are not a part of a family and the individuals concerned have given their consent for an exception.¹⁹²

Both directives are also obliging the states to pay special attention in general to vulnerable persons detained in regards to physical and mental health.¹⁹³ This includes minors in families and unaccompanied as accounted for above, but also disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.¹⁹⁴

4.5 How long can you detain?

Asylum seekers detained under the Dublin Regulation detention must be detained the shortest time possible, but detention cannot exceed 6 weeks as reduced time limits for submitting and responding to transfer requests apply.¹⁹⁵ For other asylum seekers detained for grounds named in art. 8(3) of the

¹⁸⁸ Reception Conditions Directive, art. 11 (4) resp. Return Directive, art. 17 (2).

¹⁸⁹ Reception Conditions Directive, art. 11 (2) resp. Return Directive art. 17 (5).

¹⁹⁰ Reception Conditions Directive, art. 11 (2) and (3) resp. Return Directive art. 17 (1), and Reception Conditions Directive, art. 11 (2) resp. Return Directive art. 17 (3).

¹⁹¹ Reception Conditions Directive, art. 11 (3) resp. Return Directive art. 17 (4).

¹⁹² Reception Conditions Directive, art. 11 (5).

¹⁹³ Reception Conditions Directive, art .11 (1) resp. art. 16 (3) Return Directive.

¹⁹⁴ Reception Conditions Directive, art. 21 and Return Directive, art. 9 (3).

¹⁹⁵ Dublin Regulation, art. 28 (3).

Receptions Conditions Directive there is no specific maximum time set for the detention of asylum seekers. However the detention must be for the shortest time possible and only as long as the conditions in art. 8(3) are fulfilled.¹⁹⁶

Persons detained under the Return Directive, as with asylum seekers, should only be detained for the shortest period possible and only as long as ‘the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal’.¹⁹⁷ There also needs to be a reasonable prospect of removal for the detention to be justified. If no such prospect exists the person must be immediately released.¹⁹⁸ The principle of non-refoulement or the removal of a stateless person can be an example of barriers where the reasonable prospect of removal does not normally exist.¹⁹⁹ The Return Directive further provides for a maximum time limit for pre-removal detention. The time limit is up to six months.²⁰⁰ The six months can be extended with 12 months in exceptional circumstances. Such circumstances are when the state has failed, despite reasonable efforts, to remove a person due to non-cooperation from the third country national or where there are barriers to obtaining travel documentation. Exceptional extensions require the authorities to have first taken all reasonable efforts to remove the individual.²⁰¹

Prior to the Return Directive there were no regulations on an EU level on a maximum time. This lead to some countries lowering their maximum times limits. Sweden did not have a time limit prior to this, but has now set their maximum limit for detention to 2 months, with a possible extension up until a total of 12 months.²⁰² In other countries however this has led to a justification to prolong the time limits. Italy for example extended their maximum time from 6 to 18 as a result of the directive.²⁰³

Under the ECHR there needs to be a realistic prospect of removal

¹⁹⁶ Reception Conditions Directive, art. 9 (1).

¹⁹⁷ Reception Conditions Directive, art 15 (1). See also Reception Conditions Directive, art 15 (5).

¹⁹⁸ Return Directive, art .15 (4).

¹⁹⁹ ECtHR and FRA, 2016, p. 159.

²⁰⁰ Return Directive, art. 15 (5).

²⁰¹ Return Directive, art.15 (6).

²⁰² Aliens Act (Utlänningslag 2005:617), chapter 12 section 4.

²⁰³ GDP, Italy Country Profile.

according to art. 5(1)(f) in order to keep a person in detention in purpose of their ordered deportation or extradition. When there is no ‘action with a view to deportation’ under way or actively pursued detention is arbitrary. ECHR does not provide a specific time limit but the permitted duration of detention depends on an examination of national law together with an assessment of the particular facts of the case.

The fact that the UK is not a part of the Return Directive or the Dublin Regulation has resulted in them being the only country in the EU without a maximum time limit for detention.²⁰⁴ The statutory power to detain in the UK derived from the Immigrations Act of 1971, and the most important case law on the subject is that of Hardial Singh which set out principles for the use of detention. A UK Supreme Court judgement determined that the absence of a time limit does not make the detention unlawful as such, as long as there is a procedure capable of avoiding the risk of arbitrary detention.²⁰⁵ ECtHR confirmed this in the case of J.N v the UK by stating that a time limit is not prescribed by the ECHR, but only a factor that the Court will take into account in its overall assessment of whether domestic law is sufficiently foreseeable.²⁰⁶ The UK has received criticism for not having a statutory time limit on detention from OHCHR. OHCHR concludes in a periodic report of 2015 that the UK should ’[e]stablish a statutory time limit on the duration of immigration detention and ensure that detention is a measure of last resort and is justified as reasonable, necessary and proportionate in the light of the relevant circumstances.’²⁰⁷

The Immigration Act 2014 sets a maximum time for unaccompanied children to be in detention to 24 hours, and the Immigration Act 2016 detention of pregnant women was limited to 72 hours, with possible extension to up to a week.²⁰⁸ In 2015 there was a parliamentary inquiry (the Detention Inquiry) into the lack of time limit on detention. In the final report they recommended that

²⁰⁴ Ireland is not a part either but has a time limit of 21 days. See APPG (2014) p. 12.

²⁰⁵ R (Nouazli) v Secretary of State for the Home Department [2016] UKSC 16.

²⁰⁶ ECtHR, *J.N. v. United Kingdom*, app. no. 37289/12, 19 May 2016, para. 97-101.

²⁰⁷ UN Human Rights Committee (HRC), ‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’ (17 August 2015), CCPR/C/GBR/CO/7, p 9, para 21.

²⁰⁸ Immigration Act 2014, s 5(1)-(5); Immigration Act 2016, s 60(1)-(13).

indefinite detention should cease and a time limit of 28 days should be imposed, however no changes has been made so far.²⁰⁹

At the end of the third quarter of 2014, 50 people had been detained in the UK for between one year and 18 months, 22 between 18 months and two years, 14 between two and three years, two between three and four years, and two people had been detained for more than four years.²¹⁰

4.5 Who can detain?

As the detention regime has expanded more actors have become involved. Traditionally migration related actions has been viewed as a core function of the state related to the sovereignty. With more and more actors within the migration detention regime it is made clear that migration detention can also be carried out by non state actors. However, Flynn concludes there needs to be an element of lawfulness; that there must be provisions in domestic law. He concludes that migration detention does not need to be exercised by the state but should however be conceptualised as ‘occurring on behest of the state for immigration purposes.’²¹¹

Neither EU-law nor international human rights regulations prohibits privatisation as long as the respect for human rights are ensured in the process of privatisation. States are in other words free to privatise public services. In some instances the whole operation of the detention centres are privatised and in others certain services within. Detention can be operated by the state itself, staffed by police as in Hungary or Migration Board personale as in Sweden.²¹² In the UK, as well as in Australia and in the US, for-profit companies hold the majority of the detention capacity.²¹³ NGOs have also been managing detention

²⁰⁹ APPG (2015) p. 9.

²¹⁰ Ibid. p. 21.

²¹¹ M. Flynn (2016b) p. 25.

²¹² GDP, Hungary Country Profile; Swedish Migration Board ’Förvar’ (updated 28 February 2017) <<https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Fokusområden/Forvar.html>> accessed 7 March 2017.

²¹³ In the UK 7 out of 11 detention centers are privatised, Migration Observatory, 2016; in the US 62% of the detention beds are privatised, Detention Watch Network, ‘Detention 101’ <www.detentionwatchnetwork.org/issues/detention-101> accessed 20 February 2017.; in Australia all detention centers are privatised. See GDP, Australia Country profile.

facilities in different ways, for example in Italy as was shown above.

Migration detention can also be managed in mixed constellations, for example Caritas Lebanon, Lebanese state security agents, the UNHCR and the International Centre for Migration Policy and Development (ICMPD), a Vienna-based international organisation comprised of 15 Member States, are working together to help Lebanon's reception and detention capacity.²¹⁴

5 Practices of privatisation and its criticism

5.1 Abuse and mental health

Widespread reports of abuses at facilities that are serviced by private contractors in Europe arguably points to structural causes. There are many reports of abuse inside of migration detention centres. Worth noting is that this is not a problem isolated to private run detentions, but there are also reports of abuse and violations of rights where the state is the sole actor. However, there are certain indications that privatisation can further problematise these issues.

In the UK, there have been widespread reports of abuse in the migration detention facilities. Detention has a large impact on the physical and mental health. Often the detainees have suffered trauma in their country of origin or en route to the destination country. Detention and the uncertainty of their future further add to the trauma, or creates new ones. Psychologists have objected to holding mentally ill persons in detention as it hinders recovery.²¹⁵ In the UK migrant detention centres there was one suicide attempt per day during 2015.²¹⁶ In 2015 the Detention Inquiry reported, based on witness statements from former detainees, that there was a culture of disbelief against detainees experiencing mental problems at Yarl's Wood IRC. Further detainees put under suicide watch reported that this resulted in male guards watching female

²¹⁴ M. Flynn, 'Capitalism and Immigration Control: What Political Economy Reveals about the Growth of Detention Systems' (2016c) Global Detention Project Working Paper No. 16, p. 14. <<https://www.globaldetentionproject.org/wp-content/uploads/2016/10/Matthew-Flynn-GDP-Working-Paper-Oct-2016.pdf>> accessed 7 March 2017.

²¹⁵ APPG (2015) p. 57-58.

²¹⁶ A. Cowbrun, 'Suicide attempts at UK immigration removal centres averaged one a day in 2015, official figures reveal' *The Independant* (6 April 2016) <www.independent.co.uk/news/uk/suicide-attempts-at-uk-immigration-removal-centres-averaged-one-a-day-in-2015-a6971811.html> accessed 7 March 2017.

d detainees when they are undressed and entering their rooms unannounced.²¹⁷ A former employee witnessed to the Detention Inquiry that ‘[t]he contract manager alluded that most individuals within the centre complaining of mental health symptoms were putting it on to avoid deportation and removal, the same attitude included physical symptoms unless observable symptoms were present [...]’²¹⁸

Yarl’s Wood is the largest detention centre in the UK. The centre, hosting women and children, has caused controversy since its opening in 2001. In 2002, only three months after opening, the then Group 4-run facility was destroyed in a fire. The fire erupted during a riot, allegedly started due to the abusive treatment of inmates in general, and specifically by the fact that a Group 4-guard forcefully restrained a 55-year old woman seeking medical assistance.²¹⁹ In the trial following the fire, that left five detainees injured, the judge highlighted the substandard quality of service, the infrastructure and the tight schedule that was imposed on the private contractors to complete the site. The judge commented that ‘Group 4 were ill-equipped to deal with the outbreak of violence adequately.’²²⁰ The judge also questioned the actions of Group 4 following the fire including coaching its employees for the trial and putting up pictures of several of the defendants (who were detainees) in the staff room in order to facilitate identification.²²¹ The incident did not lead to the closure of the facility, but instead it was repaired and Serco took over the contract in 2007.²²²

There has been many reports and allegation of sexual violence and assault at Yarl’s Wood. In 2013, when Serco had taken over the contract for Yarl’s Wood, a testimonial from a former detainee, named ‘Tanja’ in *The Guardian* revealed inappropriate sexual approaches, sexual acts and several

²¹⁷ APPG (2015) p. 57

²¹⁸ Ibid. p 58.

²¹⁹ P. Hamilos, ‘Asylum centre wrecked by fire’ *The Guardian* (15 February 2002) <www.theguardian.com/uk/2002/feb/15/immigration.immigrationandpublicservices4>

²²⁰ R. Allison, ‘Judge slates Group 4 in Yarl’s Wood riots’ *The Guardian* (5 August 2003) <www.theguardian.com/uk/2003/aug/05/immigration.immigrationandpublicservices>

²²¹ Ibid.

²²² The Home Office, ‘Serco re-appointed to manage Yarl’s Wood Immigration Removal Centre’ (24 November 2014) <www.gov.uk/government/news/serco-re-appointed-to-manage-yarls-wood-immigration-removal-centre> accessed 8 March 2017.

detainee-guard relationships, some lasting for months. ‘Tanja’ suggested that the women sometimes would enter into relationship in hopes that it would help their case and that attempts to report abuse could be met with threats of being sent to prison detention instead. There were numerous accounts on how women felt pressure to give into sexual requests from the guard as the guards suggested that they could get them out of detention if they cooperated. She also witnessed that many of the incidents took place in a special room that did not have a CCTV.²²³ In 2014, a former employee of Serco confirmed to The Guardian that there was a ‘blind spot’ at Yarl’s Wood, and that this was a well known place amongst the guards and used to abuse detained women. The former employee also confirmed the allegation made by the former detainees that some women felt obliged to flirt with male guards in order to obtain basic items such as toiletries.²²⁴

A rape survivor from Uganda reported a male guard entering her room when she was semi-naked, causing re-traumatisation. There were also reports of guards watching them in the shower and entering their rooms in the middle of the night or early morning when they were undressed. One detainee reported seeing a half naked woman being sat on by male guards in relation to her removal. When her lawyer tried to investigate the CCTV-footage of the deportation had been removed.²²⁵ The former Serco employee also witnessed ‘an endemic anti-immigration culture’ among the staff which contributed to hostility and intimidation acts towards detainees.²²⁶ Serco denied that this is a systematic problem and stated that they had dismissed staff on the ‘few occasions on which it has occurred’.²²⁷ Following the incidents, the Chief

²²³ M. Townsend, ‘Yarl’s Wood abuse allegations: Tanja’s story’ *The Guardian* (14 September 2013) <www.theguardian.com/uk-news/2013/sep/14/yarls-wood-immigrant-sex-abuse-tanja>

²²⁴ M. Townsend, ‘Serco whistleblower’s Yarl’s Wood sex claim’ *The Guardian* (24 May 2014) <www.theguardian.com/uk-news/2014/may/24/serco-whistleblower-yarls-wood-pressure-immigration> accessed 8 March 2017.

²²⁵ D. Taylor, ‘Dossier calling for Yarl’s Wood closure chronicles decade of abuse complaints’ *The Guardian* (15 June 2015) <www.theguardian.com/uk-news/2015/jun/15/yarls-wood-report-calling-for-closure-decade-abuse-complaints> accessed 7 March 2017.

²²⁶ M. Townsend (The Guardian 24 May 2014)

²²⁷ M. Townsend, ‘Sexual abuse allegations corroborated at Yarl’s Wood immigration centre’, *The Guardian* (21 September 2013) <www.theguardian.com/uk-news/2013/sep/21/sexual-abuse-yarls-wood-immigration> accessed 7 March 2017.

Inspector of Prisons in the UK made a surprise visit to the centre. He confirmed that there are numerous reports from female detainees regarding inappropriate sexual contact and comments from the staff. Further the Prison Inspector found that women's histories of victimisation were insufficiently recognised by the authorities and that more women staff were needed.²²⁸

Another incident at Yarl's Wood that was widely reported was the footage, obtained by Channel 4 News in 2015, of some guards talking about detainees. In the footage guards can be heard calling detainees 'beasties', 'animals' and 'bitches'. One guard is commenting 'They're animals. They're beasties. They're all animals. Caged animals. Take a stick with you and beat them up. Right?'.²²⁹ Another guard is heard commenting on the self-harm of detainees; 'They are all slashing their wrists, apparently. Let them slash their wrists.'²³⁰ Following the incidents another report by the Prison Inspector called Yarl's Wood 'a place of national concern' and stated that conditions had deteriorated since the last visit and was understaffed.²³¹ In one report by the HM Prison Inspector at Harmondsworth found that paperwork suggested that the use of force was used proportionally, however after inspecting video footage he identified several incidents where this was not the case.²³²

A report by the Medical Justice Network on abuse in detention centres in the UK found the complaints systems in place to be both distrusted and ineffective. They conclude that there is some evidence that migrants lodging complaints are subject to harassment and further abuse, and sometimes warned that complaining will affect their chances of obtaining leave to remain or

²²⁸ HM Inspector of Prisons, 'Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 17-28 June and 30 Sept – 1 Oct 2013' (2013), p. 5. <www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf> accessed 7 March 2017.

²²⁹ Channel 4, 'Yarl's Wood: undercover in the secretive immigration centre' (2 March 2015) <www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation> accessed 7 March 2017.

²³⁰ Ibid.

²³¹ HM Chief Inspector of Prisons, 'Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April – 1 May 2015' (2015) p. 7 and 18; HM Cheif Inspector of Prisons, 'Report on an unannounced inspection of Heathrow Immigration Removal Centre - Harmondsworth site, 7–18 September 2015' (2016) para. 1.53. <www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf> accessed 7 March 2017.

²³² HM Cheif Inspector of Prisons (Harmondsworth 2016) para. 1.51.

subject to a counter complaint.²³³

Although acts of violence are not exclusive to private actors there are factors indicating that problems could be enhanced by the use of private companies. According to the testimonials of former employees at G4S, violations of migrant's rights are encouraged through indirect financial directives. Former employees of G4S said to the Guardian that the company encouraged guards to use violence during deportation operations, under the threat of financial penalties. They claim the reason to be that pilots often will not fly with reluctant passengers and that a cancelled flight costs a lot of money. As this could mean heavy repercussions for the security company responsible for the delay the guards are tempted to use force to keep the detainee 'calm' in order to avoid deductions to their salary.²³⁴

In February 2013, a detainee at Harmondsworth detention centre died whilst handcuffed to a GEO Group security guard on a visit to the hospital.²³⁵ In a report by the Prison Ombudsman following the death it was noted that 'immigration removal centres such as Harmondsworth are run by private companies under Home Office contracts which may encourage risk aversion in the use of restraints because of the financial penalties imposed should a detainee escape.'²³⁶

This was confirmed in 2016 when a heart sick man had been detained for failing to report under the conditions of his bail and was under supervision of an GEO Group security guard. It was reported that the Home Office had instructed that the handcuffs were taken off when it was made evident that the man was dying. However, this was not done until several days later, a few hours before his death. The GEO Group employee stated that he was afraid to

²³³ E. Ginn 'Outsourcing abuse: the use and misuse of state-sanctioned force during detention and removal of asylum seekers' (2008 Medical Justice), p. 16-17. <www.medicaljustice.org.uk/wp-content/uploads/2016/03/outsourcing-abuse.pdf> accessed 7 March 2017.

²³⁴ P. Lewis and M. Taylor, 'Staff on deportation flights played 'Russian roulette' with lives' *The Guardian* (8 February 2011) <www.theguardian.com/uk/2011/feb/08/staff-deportation-flights-g4s> accessed 25 February 2017

²³⁵ Prisons and Probation Ombudsman, 'Investigation into the death of a man on 10 February 2013 while a detainee at Harmondsworth Immigration Removal Centre' (2014) p.3. <www.ppo.gov.uk/wp-content/uploads/2015/10/H176-13-Death-of-a-male-detainee-in-hospital_Harmondsworth-IRC_10.02.13_Nat.pdf#view=FitH> accessed 7 March 2017.

²³⁶ Ibid. para. 76.

lose his job if the fine of 10 000 was realised.²³⁷

According to Flynn the hierarchy within an organisation allows for the elite at the top to delegate responsibility and blame down the company chain. When a problem arises it is those at the bottom of the hierarchy that will face the consequences such as ‘job insecurity, dismal pay, and punitive action.’²³⁸ Allegations of inadequate training for employees at the bottom of the hierarchy also points to a higher risk for human rights abuses.²³⁹

5.2 Cutting costs and increasing profits

There is an economic argument for the privatisation of migration detention. By bidding on calls for tender the costs are driven down, resulting in lower costs for the state. A consequence of this could also be compromises on other areas.

In Italy the costs have been driven down through competitive bidding. When GESPA and Acuarinto won the contract for the detention centre Pente Galeria CIE and the reception centre Castelnuovo di Porto CARA the cost reductions resulted in reduced access to psychological assistance, a cut in the pocket money for migrants and insufficient number of meals.²⁴⁰ The conditions in the CIEs in Italy vary. However, according to an AIDA report conditions have worsened. The reports links the linked to the move to private companies through public procurement contracts as well as a public spending review bringing that maximum day spending down to 30 euro per person, resulting in staff reduction. Previously the daily spending had been depending on the centre and needs, and could range between 28 euros and 72 euros.²⁴¹

In the UK Serco won a new contract for Yarl’s Wood IRC in 2015. The contract cost 42 million pounds less than the previous one and the money would be saved by reducing the staff by 19 % and replacing them with ‘self-

²³⁷ D. Taylor, ’Seriously ill detainee was shackled hours before he died’ *The Guardian* (30 July 2016) < www.theguardian.com/uk-news/2016/jul/30/home-office-report-exposes-treatment-of-sick-detainee-shackled-hours-before-he-died > accessed 7 March 2017.

²³⁸ M. Flynn (2016a) p. 89.

²³⁹ Ibid.

²⁴⁰ L. Arbogast (2016) p. 45.

²⁴¹ Asylum Information Database (AIDA), ‘Mind the Gap: An NGO perspective on challenges to accessing protection in the Common European Asylum System’ (2014) p. 72. <www.asylумineurope.org/sites/default/files/shadow-reports/aida_annual_report_2013-2014_0.pdf> accessed 7 March 2017.

service centres'.²⁴² A report published by the National Audit Office in July 2016 are sceptical to the changes saying that '[w]hile the move to self-service in the residential services contract reduced demands on staff time, Serco's reduction of staff meant there were insufficient operational and management staff'.²⁴³

It can be argued that the rationale for outsourcing assumes that private detention operators have built-in motives to provide adequate services. McDonald writes that '[a]t least during the early stages of contracting, there appear to be certain disincentives to diminish services: if performance falls below agreed-upon standards [...] firms risk losing contracts and clients'.²⁴⁴

However, Flynn argues that this fails to take into account the rationalisation process that is internal to detention centres.²⁴⁵ Migration detention centres are seen to lower the costs for taxpayers by over-exploiting captive labour. A study of micro-economics of detention centres in the US shows how using migrants as labour to keep up the facility, paying them 1-3 US dollar per day for basic maintenance, saved one 187-bed facility 5-6 million US dollar according to one estimate.²⁴⁶ In the UK a study by Burnett and Chebe showed similar trends. Migrants are working for as little as 1-1.25 pounds per hour, and sometimes less as migrants are exempted from the minimum wage.²⁴⁷ As opposed to work in prison that often is designed to rehabilitate, the work in the migration centres are often focused on the upkeep of the centre, which saves the operators a considerable amount of money.²⁴⁸ Basic items are sold to the migrants at inflated prices and in one case G4S paid

²⁴² A. Travis, 'Yarl's Wood detention centre staff replaced by 'self-service kiosks' *The Guardian* (7 July 2016) <www.theguardian.com/uk-news/2016/jul/07/yarls-wood-immigration-detention-centre-staff-replaced-by-self-service-kiosks> accessed 7 March 2017

²⁴³ National Audit Office, 'Yarl's Wood Immigration Removal Centre' (2016) Report by the Comptroller and Auditor General, para. 9.

<www.nao.org.uk/wp-content/uploads/2016/07/Yarls-Wood-Immigration-Removal-Centre.pdf> accessed 7 March 2017.

²⁴⁴ D. McDonald, 'Public Imprisonment by Private Means: The Remergance of Private Prisons and Jails in the United States, the United Kingdom and Australia' (1994) *British Journal of Criminology* 34: 28-48, p. 42.

²⁴⁵ M. Flynn (2016a) p. 86-87.

²⁴⁶ M. Flynn (2016a) p. 87.

²⁴⁷ J. Burnett and F. Chebe, 'Captive labour: asylum seekers, migrants and employment in UK immigration removal centres' (2010) *Race & Class* 51(4):95-103, p. 99.

²⁴⁸ Ibid. p. 98.

the detainee in voucher only valid for the products they were supplying, guaranteeing the company an income.²⁴⁹ Burnett and Chebe points out the obvious irony of the working detainee:

There is a fundamental and obvious irony in that people who are prohibited from working as a result of their immigration status can be put in conditions where, if detained, they have to accept exploitative working practices. This is highlighted further when considering the fact that, on the one hand, the government is massively increasing resources and personnel to investigate and prevent undocumented working whilst, on the other, it is sanctioning conditions in [Immigration Removal Centres] that have many of the hallmarks of undocumented working.²⁵⁰

As such the operators are finding ways to reduce costs by using captive labour, and increasing profit by selling items at inflated prices without decreasing services to ‘agreed-upon standards’. Flynn writes that the ‘rationalization processes have translated into tremendous revenue gains for private contractors and for entrepreneurial public governments. Over-exploitative labour combined with lucrative contracts provides healthy profit margins.’²⁵¹

By bringing in a for-profit into the management structure of migration detention there is a risk of the policy shifting focus from the well being of the migrant to the policy focus away from the well-being of migrants the rationale of the company to make profit, which can result in capitalisation of the migrants rights as well as the employees. In other words, whilst keeping the services provided on an agreed-upon level in order to not lose contracts or gain negative publicity, the rationalisation process leads operators to find other revenues of profit. They are balancing the competing goals of profit and an acceptable treatment of the detainees.

²⁴⁹ Ibid. p. 100.

²⁵⁰ Ibid. p. 101.

²⁵¹ M. Flynn (2016a) p. 88.

5.3 Lobbying and lock-in effects

As shown in the background, the lobby efforts of the private security companies seems to have had an impact in the development of policies of border control and been essential in order for them to establish themselves on the border security market. A comparable trend of private companies interacting with public bodies can be seen within the migration detention regime as well. Flynn uses the concept of ‘corporate-state nexus’ to highlight the increasingly blurred lines between public and private, and writes that ‘[a] focus on the corporate-state nexus draws attention to the organisational arrangement of detention within and across countries to trace resource flows, policy initiatives, and delegation of responsibility.’²⁵²

As a first note we can notice the possible relationship between private prisons and immigration detention. Comparing different countries with privatised prisons show that immigration privatisation frequently proceeds private prisons.²⁵³ Whilst it is hard to tell if it always has been an intentional strategy, there are obvious similarities in the development where the private sector initially seem to choose a branch of corrections that needs minimal security such as migration detention.²⁵⁴ McDonald claims that privatisation of immigration detention centres in the US served as a ‘seedbed’ for prison privatisation where private firms carefully chose immigration detention centres and other low-security facilities initially before expanding to high security adult facilities.²⁵⁵

Menz describes the development in the UK where ’the privatization of select prisons in the United Kingdom [...] developed in synchronicity and involving the same corporate actors as greater private sector involvement in the management of migration detention centres.’²⁵⁶ In 1971, the first private detention centre opened, by 1988 nearly half of all detained immigrants were held in privately managed facilities. In the 1991 the White Paper: Custody,

²⁵² Ibid. p. 81.

²⁵³ M. Flynn and C. Cannon (2009) p. 15.

²⁵⁴ Ibid.

²⁵⁵ D. McDonald (1994) p. 30.

²⁵⁶ G. Menz (2013) p. 118.

Care and Justice: The Way Ahead for the Prison Service in England and Wales was presented. Menz argues this development was partially a result from the advocacy and persistent lobbying of the neoliberal think tank Adam Smith Institute and the UK subsidiary of the American company Corrections Corporations of America (CCA) currently widely involved in the private migration detention and private prison industry in the US. This was in combination with an, according to Menz, fairly ideologically biased composition of the 1988 House of Commons Home Affairs Select Committee (including a MP, who simultaneously served as Director General of the British Security Industry Association). This led to the outsourcing of two private prisons to private security companies.²⁵⁷

This development is indicative of the willingness of private companies to expand their businesses to expand. This combined with the interest of protecting their business, Flynn writes, ‘leads companies to thus to pressure government representatives accordingly, pushing weak regulations and supporting legislation that could improve their share of the market.’²⁵⁸

Another aspect of the public-private relationship is the concept of the ‘revolving door’ where public employees leave their position to work for private companies in the same industry and vice versa. For example in the US Michael Conlon left his position as head of the Federal Bureau of Prisons in 1993 after 22 years of public service to later serve as the Chief Operating Officer and executive vice president of CCA. President Bush nominated CCA’s general council to be a federal judge in the home state of the company.²⁵⁹ According to Feltz and Baksh this circulation of personnel between CCA and the government ‘creates seamless connections between CCA and its federal funders’.²⁶⁰ Similarities can also be found in the UK. Bacon writes that regulatory officers get hired by the companies they were previously monitoring when they leave their government position.²⁶¹ According to Boin et al, due to

²⁵⁷ Ibid.

²⁵⁸ M. Flynn and C. Cannon (2009) p. 16.

²⁵⁹ M. Flynn (2016a) p. 82.

²⁶⁰ R. Feltz and S. Baksh, ‘Business of Detention’, in: J.M. Loyd, M. Mitchelson and A. Burridge (eds.), *Beyond Walls and Cages: Prisons, Borders, and Global Crisis* (University of Georgia Press, 2013) p. 147.

²⁶¹ C. Bacon (2005) p. 23.

the fact that directors of private prisons often having vast knowledge of the public body they become a key role in the negotiation of agreements where there are conflicting demand between the Prison Service and the private companies, resulting in the creation of new norms.²⁶²

It can be difficult to observe the direct causal effect from lobbying efforts and concept of the revolving door. However, as Flynn writes that ‘the establishment of deeply rooted private incarceration regimes can engender an institutional momentum that takes on a life of its own’. Fernandes calls this the ‘immigration-industrial complex’. He writes, on the US experience, that ‘[w]ith the increase in prison beds to house immigrants comes the pressure to fill them’ and ‘given the tight connections between the private-prison industry and the federal government efforts to expand bed space will likely increase’.²⁶³

Menz further notes the lock in effects privatisation could result in, in order to make them election safe. He exemplifies this with Labour winning the election of 1997 where they had promised to bring the private prisons into public control again, only to seven days after the election break the promise.²⁶⁴ Menz argues that this can be seen with migration detention as well; ‘[i]n light of the high operating costs, perennially resurfacing problems with abusive treatment of inmates and an uncertain deterrence effect on would-be migrants, it seems surprising that the privatisation course was not seriously questioned.’²⁶⁵ Menz claims that this could be explained by the way financial and contractual arrangements are designed to be hard to untangle as well as continued lobbyism.²⁶⁶ Flynn formulates this as how ‘[i]nitial contracts with the private sector create a path dependent situation that perpetuates the role of the private sector in the managing detention centres.’²⁶⁷ Thomas Gammeltoft-Hansen emphasises another aspect of the lock effects, regarding the migration industry in whole, by saying that ‘[o]ver time, these private companies will

²⁶² A. Boin, O. James and M. Lodge ‘Trends in the Control of Prisons in Europe: New Public Management or Europeanisation?’ (2004) Paper presented to Panel ‘Reforming the Governance of the Public Sector’, Political Studies Association Annual Conference, University of Lincoln, April 6-8, p. 11.

²⁶³ D. Fernandes (2011) p. 199.

²⁶⁴ G. Menz (2013) p. 118.

²⁶⁵ Ibid. p. 119.

²⁶⁶ Ibid.

²⁶⁷ M. Flynn and C. Cannon (2016) p. 83.

have more know-how about how to do these tasks and increasingly are going to be setting the parameters and setting the policy directions.²⁶⁸

5.4 Crimmigration

The intersection of criminal and administrative measures can further be seen in the relation between prisons and migration detention. Administrative detention is not punitive and as such EU case law argue for the importance of detainees not to be held in prison.²⁶⁹ However, even when there are designated facilities for administrative detention in use there still seems to be some blurred lines. In her study of detention centres in the UK Bosworth's notes how both detainees and staff refer to IRCs as 'prison'. The site of detention becomes problematic and Bosworth points out the symbolic criminalisation of holding people in places that look like prison, and that people might ask themselves, 'Why hold people in places that looks like prison unless they are, somehow, dangerous?'.²⁷⁰

Bosworth also noted that all the centre managers during the course of her study had previously worked in prisons. Many of the key policies of the centres had noticeable similarities with the ones in prison. She also notes ambivalence among the staff with not really being sure of their role and describing it as a cross between a prison officer and a social worker.²⁷¹ This confusion can also occur due to the fact that many of the private companies in the detention business also run private prisons. Gammeltoft writes that this can 'lead to situations where guards fail to recognise the difference between punitive and administrative detention'.²⁷²

²⁶⁸ T. Gammeltoft-Hansen in interview with IRIN News, 'Private security firms prosper as more migrants detained' (IRIN 12 March 2014) <www.irinnews.org/analysis/2014/03/12/private-security-firms-prosper-more-migrants-detained> accessed 2 March 2017.

²⁶⁹ See Cases C-473/13 and C-514/13 *Bero v Regierungspräsidium Kassel; Bouzalmate v Kreisverwaltung Kleve* EU:C:2014:2095; Case C-474/13 *Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik*, EU:C:2014:2096.

²⁷⁰ M. Bosworth, 'Border Criminologies: Assessing the Changing Architecture of Crime and Punishment' (2016) Global Detention Project Working Paper No. 10, p. 8. <www.globaldetentionproject.org/border-criminologies-assessing-the-changing-architecture-of-crime-and-punishment> accessed 7 March 2017.

²⁷¹ Ibid. p. 5-6.

²⁷² T. Gammeltoft Hansen, 'The rise of the private border guard', in: T. Gammeltoft-Hansen and N. Nyberg Sørensen, *The Migration Industry and the Commercialization of*

Although aspects of criminal law have been incorporated in migration law, other aspects have been left out. There are legal safeguards in regards to migration detention as well, but as migration detention is of an administrative nature they are often not as extensive as with criminal detention.²⁷³ Majcher writes that

the classification of immigration detention as administrative benefits states because it allows them to avoid providing immigration detainees with costly and time consuming procedural guarantees that people receive during criminal proceedings. Because of this selective application of processes that are normally associated with criminal law, crimmigration within EU law has the potential to render detainees more vulnerable while at the same time offering greater discretion to governments.

The public and official discourse seems to offer a rationale for the continuum of migration detention despite seemingly inefficient in relation to the said purposes. Alternatives to detention have been proven more cost efficient as well as having a high compliance rate.²⁷⁴ In contrast there has been a lack of connection between the number of removals and the number of detainees, suggesting that detention is not efficient in aiding removal.²⁷⁵ This points towards an assumption that migration detention also is political. Migration detention is seemingly used ‘to regulate the more abstract social unrest regarding unwanted migration.’²⁷⁶ As pointed out in chapter 4.1.3 migration detention as a deterrent is arbitrary and therefore unlawful. However Majcher points out that a lack of clear safeguards to prevent authorities to use the ‘risk of absconding’ could be used to justify regular detention of persons in the removal process. As the ‘objective criteria’ needed to determining the risk

International Migration (Routledge 2013) p. 137.

²⁷³ I. Majcher, ‘Crimmigration’ in the European Union through the Lens of Immigration Detention’ (2013) Global Detention Project Working Paper No. 6, p. 12.

<<https://ssrn.com/abstract=2340566>> accessed 7 March 2017. See also J. Parkin, 2013.

²⁷⁴ IDC (2015b) p. 75 ff.

²⁷⁵ See for example A. Leerkes and D. Broeders, ‘A Case of Mixed Motives? Formal and Informal Functions of Administrative Immigration Detention’ (2010) British Journal of Criminology, Vol. 50, Issue 5; 830-850, p. 835 where they account for the increase of detention and a simultaneous decrease of expulsions in the Netherlands.

²⁷⁶ A. Leerkes and D. Broeders (2010) p. 843.

is left up to the discretion of domestic law there is a risk of it not being defined exhaustively or not at all.²⁷⁷ In certain national legislation the mere irregular stay/entry is included in this criteria. Majcher argues that ‘[a]utomatic immigration detention imposed on account of solely irregular status thus can be seen as deterrent in nature. It aims at deterring non-citizens from staying irregularly.’²⁷⁸ In an campaign ordered by the UK Home Office but carried out by Capita, the mother company of Tascor that runs detention centres in the UK, this rationale was used with advertisement cars driving the streets of London with the words ‘In the UK illegally? Go home or face arrest.’

5.5 Accountability and responsibility

A case often mentioned in the discussion on privatisation of the migration industry is the death of Jimmy Mubenga in 2010. Mubenga came to the UK as a refugee 16 years earlier. His status was revoked after he had been involved in a pub fight. Three G4S security guards escorted him on board the flight to Angola. Mubenga was handcuffed behind his back and his hand was being held down between his knees while the security guards forcibly restrained him. As the plane taxied to the runway Mubenga lost consciousness and subsequently died. Several passengers witnessed to having heard Mubenga repeatedly say that he could not breathe.²⁷⁹

Up until that point G4S held the exclusive contract with the UK Border Agency to provide escort for all immigration detainees. The Mubenga case put to question practice of private contractors in the context of deportations and forced escorts. After the incident several former employees have come forward and reported that senior management had ignored the internal warnings of poor training and unsafe restraint techniques. The most notorious of these is the one use of Mubenga and known as ‘carpet karaoke’. This involves bending deportees over in their seats and placing their head between their legs, forcing the person to struggle for breath. The technique was supposedly effective in calming down disruptive detainees and to have them scream down towards to

²⁷⁷ I. Majcher (2013) p. 12.

²⁷⁸ Ibid.

²⁷⁹ T. Gammeltoft-Hansen (2013) p. 128.

floor instead of into the plane as to not worry other passengers. However, this can also lead to suffocation.²⁸⁰ Allegations of ‘excessive force’ were raised and the three security guards were charged with manslaughter. In 2014 they were all found not guilty in court, and to date no one has been found responsible for his death.²⁸¹

Arguments have been made that privatisation is used not only to achieve efficiency and flexibility for the state, but also to shift blame and legal burdens.²⁸² Lahav argues that the ‘webbing’ of private, local and international arrangements

reflect less an abdication of state sovereignty, than an experiment in which national states involve agents as part of rational attempts to diminish the costs of migration. [...] These strategies aim to enhance the political capacity of states to regulate migration, to make states more flexible and adaptable to all types of migration pressures, to shift the focus of responsiveness, and to generate more effective state legitimacy.²⁸³

The question of responsibility in regards to privatisation of migration detention is maybe one of the more pressing ones. International human rights law is in principle neutral on privatisation and there is no explicit prohibition against privatisation in human rights treaties. However, human rights institutes have established that the respect for human rights must be ensured in the process of privatisation.²⁸⁴ Article 10 in ICCPR reads that ‘[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’ Art. 10 sets out an absolute right making the issue of public or private irrelevant. However, the International Court of Justice has stated that: ‘[...] the fundamental principle governing the

²⁸⁰ Ibid. p. 137.

²⁸¹ M. Taylor and R. Booth, ‘G4S guards found not guilty of manslaughter of Jimmy Mubenga’ *The Guardian* (16 December 2014) <www.theguardian.com/uk-news/2014/dec/16/g4s-guards-found-not-guilty-manslaughter-jimmy-mubenga> accessed 30 January 2017.

²⁸² M. Flynn, 2016a, p. 88.

²⁸³ G. Lahav, ‘Immigration and the State: The Devolution and Privatisation of Immigration Control in the EU’ (1998) *Journal of Ethics and Migration Studies* 24(4):675-694, p. 690.

²⁸⁴ T. Gammeltoft-Hansen (2013) p. 137-138.

law of international responsibility [is that] a State is responsible only for its own conduct, that is to say the conduct of persons acting, on whatever basis, on its behalf.²⁸⁵ This seems to set a fairly high threshold on when the acts of a private entity can be attributed to the state. Gammeltoft writes that this view, however, in practice ‘is moderated by the public–private distinction, creating a legal threshold for state responsibility in cases of privatisation.’²⁸⁶

The ECHR sets out a number of negative obligations for the state, i.e. rights that the state must not violate. Art. 34 set out that the ECtHR may receive individual applications of individuals '[...] claiming to be a victim of a violation by one of the High Contracting Parties'. In other words, for a complaint to be taken up by the ECHR it needs to be addressed at the state. Since the Marckx ruling, however, ECtHR case law has made it clear that there also is a positive obligation on the state to take action in order to ensure that the rights in the convention are protected.²⁸⁷ As Hallo de Wolf points out the ECtHR

have not yet been faced with actual cases of privatization, nor have they decided whether private entities carrying out privatized functions may be regarded as an emanation of the State or public authority to which the Convention’s rights may be applicable. Until now [...] the case law has focused on breaches of the Convention by formal public authorities such as ministries, municipalities, the police, the judiciary and the armed forces of Member States.²⁸⁸

However looking at cases considering whether a private entity is considered a ‘public authority’ as stated in art. 8 and art. 10 and therefore acting as an agent of the state and where the positive obligation of the state has

²⁸⁵ Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) [2007] International Court of Justice, para. 406.

²⁸⁶ T. Gammeltoft-Hansen, 2013, p. 138.

²⁸⁷ *Marckx v. Belgium*, app. no. 6833/74, 13 June 1979. See especially para. 31. See also: A.G Hallo de Wolf, *Reconciling Privatization with Human Rights* (Intersentia, International Law Series, Antwerpen 2011) p. 132.

²⁸⁸ A.G Hallo de Wolf, (2011) p. 248-249.

been activated could give us some guidance.²⁸⁹

From the reasoning above a private actor may become involved in a human rights breach in relation to the ECtHR in two ways; by acting as an agent of the state or as a third party actor. In the former case the actions of the private actor can become attributed to the state so that the state is considered to have directly interfered with the Convention. In the latter the State can be found to have violated Convention rights by failing to take all reasonable measures to protect individuals against corporate abuse. This meaning that the state has both a negative obligation to not breach human rights, and a positive obligation to ensure that human rights are not breached generally.²⁹⁰

In the cases *Van der Mussele v. Belgium* and *López Ostra v. Spain* factors that were considered in determining whether a particular body is a ‘public authority’ were if they are ‘performing a function in the public interest, having a public law status, and the possibility of reviewing or challenging the bodies’ decisions in courts.’ From this it may be concluded that the applicability of the Convention and the responsibility for the state in relation to the conducts of a private entity is closely connected to the function performed by that body.²⁹¹

The ECtHR also noted in the *Van der Mussele v Belgium* judgement that it ’[...] cannot relieve the Belgian State of the responsibilities it would have incurred under the Convention had it chosen to operate the system itself.’²⁹² Similarly in the Costello-Roberts case the ECtHR stated that a state ‘cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals.’²⁹³ This was repeated in *Storck v. Germany* on the issue of a private psychiatric institution. The ECtHR concluded that the state could not

²⁸⁹ ECHR art. 8 para. 2: ‘There shall be no interference by a *public authority* with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’; art. 10 (1) second sentence: ‘This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by *public authority* and regardless of frontiers.’ Emphasis added, EO.

²⁹⁰ See for example by *Young, James and Webster v. the UK*, X and Y v. the Netherlands and *López Ostra v. Spain*.

²⁹¹ A.G Hallo de Wolf (2011) p. 251.

²⁹² *Van det Mussele v. Belgium*, app. no. 8919/80, 23 November 1983, **para. 29**.

²⁹³ *Costello-Roberts v. the United Kingdom*, app. no. 13134/87, 25 March 1993, para. 27.

absolve itself completely, but needed to obtain supervision and control to make sure that rights were not violated. This could be done through requiring that the private entities hold specific licenses, judicial supervision or the introduction of a visiting body.²⁹⁴ Failure to take these measures would amount to a breach of the state's '[...] existing positive obligation to protect the applicant against interferences with her liberty by private persons.'²⁹⁵

In the UK the Human Rights Act 1998 (HRA) incorporated ECHR in UK law. Art. 6(1) sets out that it is unlawful for a public authority to act in contradiction to the convention rights. The HRA further acknowledges that private entities and 'hybrid' entities can be considered 'public authority'. Art. 6(3)(b) of the HRA provides that a 'public authority' is 'any person certain of whose functions are functions of a public nature'.

The interpretation of this definition has been surrounded by controversy. The Joint Committee on Human Rights of the House of the Lords and House of Commons stated in its 2003/2004 report that note the increasing transition of 'compulsory powers' from public authorities to private companies under a contract and expressed concern that these companies would not be considered public bodies. While they did consider it unlikely that, under the state of current law, the service providers would not be considered public bodies in relation to the Human Rights Act they said that 'the status of these individual bodies, and the nature of their powers, are still to be assessed by the Courts. This will take place on a case by case basis.'²⁹⁶

The current interpretation of 6(3)(b) is narrow and only encompasses 'regulatory or coercive powers of the state'.²⁹⁷ Physical force used to deport migrants would probably be covered by this interpretation, however as the assessment are done on a case to case basis and due to the lack of case law it is hard to foresee.

Regarding the responsibility of states in relation to absolute rights such as

²⁹⁴ *Storck v. Germany*, app. no. 61603/00, 16 June 2005, para. 103-106.

²⁹⁵ Ibid. para. 108.

²⁹⁶ House of Lords and House of Commons Joint Committee on Human Rights, 'The Meaning of Public Authority under the Human Rights Act' (2007) Ninth Report of Session 2006–07, London, para. 72.

²⁹⁷ YL v. Birmingham City Council and others [2007] UKHL 27, Baroness Hale, para. 63.

the prohibition against torture or inhuman treatment in article 3 in the ECHR the UK High Court ruled on the detention of an Indian national. The detention was found to be in violation of art. 3 of ECHR due to his mental health condition.²⁹⁸ In the hearings the state made attempts to blame it on the contractor of the detention centre, GEO Group. The state argued that enough had been done in regards to delegation to the contractors and that they therefore could not be held responsible. The judge however found that this claim was not pursued ‘with any degree of rigour or enthusiasm’.²⁹⁹ The judge also concludes that even if enough evidence was put forward that the blame was on the private contractor, it is for the state to ensure compliance with ECHR. The judge continued to state that and even if the court had ‘found that the Defendant had made good her suggestions of failures by contractors, legal responsibility for compliance with Article 3 rests with her as the responsible minister.’³⁰⁰

Although the state has the responsibility in regards to absolute rights, the scarcity of case law regarding the applicability and responsibility in regards to privatisation could be said that there is some uncertainty as to of when a private entity falls under the direct responsibility of the state, and where the state only has a positive obligation with regards to breaches of human rights. Gammeltoft writes that '[m]ore hybrid public/private partnerships appear to be developing as part of the privatisation of migration control. As the intersections between public and private are becoming increasingly blurred and hard to disentangle, determining where private involvement begins and where public authority ends becomes likewise difficult.'³⁰¹

A contractual agreement and the fact that migration detention in its function is close to the core of the state would probably be likely to establish a agent-principle relationship between private companies and the state and as such making the state responsible for breaches of human rights directly. Even where such a link cannot be made the state would need to exercise supervision

²⁹⁸ See S, R (on the application of) v The Secretary of State for the Home Department [2011] EWHC 2120.

²⁹⁹ Ibid. para 221.

³⁰⁰ Ibid.

³⁰¹ T. Gammeltoft-Hansen (2013) p. 135.

to not breach its positive obligations. This could be further complicated when more actors get involved, in different constallations, for example only privatising certain parts of the operation of migration detention. One could also argue that if the state holds sole responsibility this gives the companies a shield to hide behind, and the confusion risks a situation of finger pointing and confusion for the detainees. Financial repercussions are set out in the UK for example in relation to the death of migrant set out, however, it is likely to have been calculated in their budget. Further, as Gammeltoft writes; ‘even when privatized migration control is clearly contractually regulated and carried out within the territorial jurisdiction, effective monitoring still risks being hampered.’ A reference can be made here to private military companies;

Despite an apparent desire on the part of governments to regulate private military company activities and a number of national and international efforts to implement regulatory frameworks, accountability mechanisms and various standards and codes of conduct, it has been difficult to implement them effectively; very few cases have been brought against private military companies, and even companies with established records of mismanagement continue to receive new contracts.³⁰²

5.6 Transparency and secrecy

Even in the cases where there is a clear contractual agreement issues can arise. Gammeltoft argues, that the fact that companies tend to operate behind a ‘corporate veil’ causes problems with accountability and public insight.³⁰³ Namely, the issue of accountability and responsibility is further complicated by the lack of transparency within the migration detention regime.

In a questionnaire sent out by the GDP and Access Info Europe sent out between 2013 and 2015 they asked for information around immigration detention from more than 30 countries in Europe, the US and Canada. The questions were submitted under each country's freedom of information

³⁰² T. Gammeltoft-Hansen (2013) p. 143.

³⁰³ Ibid. p. 129.

legislation and asked for basic information about detention conditions. Out of the 33 countries more than half, 19 countries, did not indicate where people were detained, 19 did not fully answer questions about the detention of children and 17 countries did not give any information concerning the detention of asylum seekers.³⁰⁴

Based on the findings on the survey it is clear that issue with transparency around detention is not only a problem for non-state actors, but a problem within the whole detention regime. However, private involvement can raise additional difficulties. When the Independent requested information concerning the alleged sexual abuses at Yarl's Wood the Home Office denied the request with the argument that 'disclosure would, or would be likely to, prejudice the commercial interests' of people involved with running Yarl's Wood.³⁰⁵ Similarly, the key financial and operational details of contracts between the Home Office and private companies running detention centres are not available due to 'commercial confidentiality'. The Prison Reform trust saw this as an issue and pointed out that it made it hard for the Parliament to hold the companies to account for misbehaviour.³⁰⁶

Flynn argues that these secrecy systems can be both formal and informal. Formal as in state of corporate secrets in order to protect themselves from attacks from outside groups and organisation. But it can also occur within the hierarchical line of control in an informal way. Two examples can be drawn from Australia. The Australasian Correctional Management (ACM) that ran detention centres in Australia from 1998 to 2004 had all external personnel such as medical staff and teacher signing confidentiality agreements.³⁰⁷ A former aid worker for Save the Children Australia said on her experience in an Australian detention centre in Nauro that abuse was a serious problem in the

³⁰⁴ GDP and Access Info Europe, 'The Uncounted: Detention of Migrants and Asylum Seekers in Europe' (2015) p. 4.

³⁰⁵ S. Fenton, 'Home Office refuses to reveal whether women in Yarl's Wood have been raped in case it 'damages the commercial interests' of companies', *The Independent* (12 June 2016) <www.independent.co.uk/news/uk/politics/home-office-refusing-to-reveal-whether-women-in-yarls-wood-have-been-raped-to-protect-the-commercial-a7077736.html> accessed 7 March 2017.

³⁰⁶ Prison Reform Trust, 'Private Punishment: Who Profits?' (2005), p. 7. <www.prisonreformtrust.org.uk/portals/0/documents/private%20punishment%20who%20profits.pdf> accessed 7 March 2017.

³⁰⁷ T. Gammeltoft-Hansen (2013) p. 142.

detention camp and that the first thing she got '[...] was a deed of confidentiality, which was a couple pages and it basically said, you cannot say anything about what goes on in this facility and if you do, you are liable for two years in jail for each disclosure.³⁰⁸ Many states also have provisions with explicit guarantees against repercussions for whistleblowing for public employees which are less common in the private sector.³⁰⁹

It could be argued that market mechanisms would increase accountability as clear economic incentives and contracts could be efficient in controlling behaviour in comparison to government actors. Gammeltoft writes however that '[e]ven the best of contracts may not foresee the full need for appraisal and monitoring and may thus equally become a straightjacket for further action and scrutiny.³¹⁰ It could also be argued that for competitive reasons companies could be the production of conduct codes and other mechanisms to up their value, however in the cases where this has occurred it has not proven very efficient and seem to be more of an image strategy.³¹¹ Another point is that negative critique could also affect the company's position on the stock market and as such public insight could arguably be less of an interest for public companies, although this can of course also be the case for state-actors.

Flynn and Cannon notes the importance of monitoring and public scrutiny by stating that 'significant influence is exerted on some countries after official visits are made by such organisations, obliging them to provide detailed responses to each point of concern raised.'³¹² It seems to be only when International organisations and supranational bodies, such as the Council of Europe's Committee on the Prevention of Torture, engage in extensive surveillance and oversight in the EU that private contractors maintain or improve their services in the detention centre and therefore is of great

³⁰⁸ S. Inskeep, 'Ex-Aid Worker: Abuse Of Refugee Children On Nauru Was Mostly Ignored', *NPR* (24 August 2016) <www.npr.org/sections/parallels/2016/08/24/491170178/ex-aid-worker-abuse-of-refugee-children-on-nauru-was-ignored> accessed 15 January 2017

³⁰⁹ T. Gammeltoft-Hansen (2013) p. 141.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² M. Flynn and C. Cannon (2009) p. 16.

importance.³¹³

6. Blurred lines

There are arguments that migration detention is both more costly and more inhumane than the alternatives. Alternatives to migration detention have also shown to be efficient whereas it the efficiency of migration detention in regards to expulsion is contested. This raises questions as to why the detention regime still reigns. The answer is not a single layered one, as previous chapters have explained.

Two main intersections where the lines have become increasingly blurred can be identified when it comes to migration detention. One being the intersection of punitive and administrative measures and the other the mix of public and private spheres.

The criminalisation of migrant seems to be somewhat of an ‘the egg or the hen’-conundrum. An increased focus on securing borders and as such pointing out migrants as a threat leads to a justification of treating migrants as criminals. The treatment of migrants as criminals in turn leads to migrants being framed as threats and so the circle continues. Detention becomes a useful tools for governments to prove they are ‘taking actions’ and using migrants as scapegoats is efficient in taking focus away from other issues.

Another aspect pointing to the blurred lines between administrative and criminal detention is the fact that many of the multinational companies operating detention centres also operate private prisons. In the UK the lobby efforts by private companies to privatise migration detention have resembled those that led to the privatisation of prisons. Further staff seem to move between prisons and migration detention and are at times uncertain of their role which can cause further confusion and closing the gap between punitive and administrative measures.

As can be seen in the EU the private companies are increasingly involved in many parts of the migration industry. This is also making its way into the detention regime. Lobbying efforts made by private companies point to the

³¹³ Ibid.

nature of the companies eagerness to expand. Although it is hard to make to certain conclusions as to how much influence the private sector has on the adoption and creation of policies and guidelines around migration detention, the success that private security companies have had in influencing the market of border security globally may suggest a trend. As companies are getting more and more established on the market this has the possibility of creating lock-in effects, both through legally binding contracts and through establishing themselves as experts on the market. One possible consequence is the state losing considerable bargaining power.

The widespread abuse and poor conditions of detention centres in general is worrying. Further as companies entering the business of migration have an inherent interest in pleasing the stock market and its shareholders, this can become increasingly problematic. It can be argued that search for profit is inherently competing with the conditions of the detention centres and the wellbeing of migrants. In contrast to the state private companies do not answer to the general public, but to their shareholders. Although it could be argued that privatisation of migration detention can increase efficiency and lower costs for states it is important to examine what this really entails. As costs are driven down, companies need to make profit in other ways. As has been shown in the previous chapters can result in cutting corners by lowering standards, staff reduction and using captive labour are examples of this. The wellbeing of detainees are put against the profit of companies and investments in the wellbeing migrants and the protection of their rights are subsequently only made where it otherwise could hurt the company's value or reputation. The fact that companies are driven by a market logic and a pursuit of financial gain could as such directly be in contrast to the assurance of human rights and as such increase the risk of violations.

By privatising detention migration the state can increase their flexibility in managing centres. As migration has become increasingly politicised it could be beneficial for the state to through the market of migration industry avoid the ordinary checks and balances of the democratic system. Privatisation of migration detention seems to let the state keep control over policies, whilst keeping a certain distance when it is preferred. As have been discussed it can

also be seen as a strategy to avoid or share legal responsibility, or in any case as to create the illusion that the practice is external to the state.

The state cannot completely delegate away the responsibility for human rights breaches and ultimately holds a positive obligation to prevent breaches. The nature of migration detention and the fact that it is mainly controlled through contracts suggests that it would be hard for companies to ultimately abstain responsibility for human rights abuses in detention centres. However there seems to be certain gaps as to the relation of private and public. As seen in the UK there is a wide range of abuse happening in the detention centres, but rarely has anyone been held accountable. Instead it has at most resulted in suspension of staff or that the state giving the contract to another company. Even in cases where the private companies are seen as an agent to the state it raises the question of impunity for the company in question. Many of the companies operating in the UK have established records of mismanagement, but as they often avoid the responsibility they are not held accountable as to more than the financial repercussions set out in the contract which they most likely have already calculated for. In many cases in the EU only parts of the migration detention are privatised as states privatise security and health care, creating even more hybrid constellations. The increased multi-layering of actors and increased blurring between public and private can cause further confusion of accountability and responsibility and as such make it difficult for detainees to access their rights and pursue vindication when breached.

This is further made evident when considering the ‘corporate veil’. There is a lack of transparency in the detention regime in general and the commercial nature of private detention centres creates another level of barriers. Confidentiality agreements and the lack of protection for whistleblowing are parts of this problem. Governments and companies are also reluctant to reveal details of the operation of detention centre as it can ruin competition and contract negotiation.

7. Conclusion

What can be seen above is a complex picture. There is an increase of private

companies in the migration industry in the EU in general and this seems to be the case with migration detention as well. Although not yet as evident as in the US and Australia, states seem to be more and more willing to privatise the operation of or services within migration centres. The rationales of privatisation of migration detention appear to be many. There seems to exist a political economy for the governments in privatisation, and it is a profitable market for companies. It should not be avoided that problems within the migration detention regime are not exclusive to the use of non state actors, but are evident also when migration detention is in full hand of the state. However, further problems seem to arise with the growth of the migration industry. The market logic that drives private companies has them weighing profit against the wellbeing of migrants risking an increase in violations of rights. In turn the privatisation of migration detention creates a comfortable distance for the states to be used at their convenience. As such both government and companies are profiting on the criminalisation of migrants, and the blurring lines between public and private seem to create confusion of responsibility possibly appreciated by both parties. A confusion that is complicated further with a lack of transparency and public scrutiny. With detained migrants already being a vulnerable group surrounded by uncertainty as well as language and legal barriers it is important to prevent violations of their rights. Efficient monitoring and a clear division of responsibility in relation to privatisation therefore needs to be developed to make sure that detained migrants are given access to their rights and are given the means for vindication should those rights be breached.

Bibliography

Literature

Books

Agustin, Laura María, *Sex at the Margins: Migration, Labour and the Rescue Industry* (Zed Books 2008).

Alston, Philip, *Non-state actors and Human Rights* (Oxford: Oxford University Press 2005).

Andersson, Bridget *Us and Them?: The Dangerous Politics of Immigration Control* (Oxford University Press 2013).

Betts, Alexander, ‘The migration industry in global migration governance’, in: T. Gammeltoft-Hansen and N. Nyberg Sørensen, *The Migration Industry and the Commercialization of International Migration* (Routledge 2013).

Feltz, R and Baksh, S, ‘Business of Detention’, in: J.M. Loyd, M. Mitchelson and A. Burridge (eds.), *Beyond Walls and Cages: Prisons, Borders, and Global Crisis* (University of Georgia Press, 2013).

Fernandes, Deepa, *Targeted: Homeland Security and the Business of Immigration* (Seven Stories Press, New York, 2007).

Flynn, Michael, ‘Detained Beyond the Sovereign: Conceptualising Non-State Actor Involvement in Immigration Detention’, in: D. Colon and N. Hiemstra, *Intimate Economies of Immigration Detention: Critical Perspectives* (Routledge 2016b).

Gammeltoft-Hansen, Thomas, ‘The rise of the private border guard’, in: T. Gammeltoft-Hansen and N. Nyberg Sørensen, *The Migration Industry and the Commercialization of International Migration* (Routledge 2013).

Gammeltoft-Hansen, T and Nyberg Sørensen, N *The Migration Industry and the Commercialization of International Migration* (Routledge 2013).

Gibney, Matthew *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge University Press 2004).

Haloo de Wolf, Antenor Gijs, *Reconciling Privatization with Human Rights* (Intersentia, International Law Series, Antwerpen 2011).

Hernández-León, Ruben *Metropolitan Migrants: The Migration of Urban Mexicans to the United States* (University of California press 2008).

Huysmans, Joris-Karl, *The Politics of Insecurity: Fear, Migration and Asylum in the EU* (Abingdon: Routledge, 2006).

Lemberg-Pedersen, Martin, ‘Private security companies and the EU borders’, in: Thomas Gammeltoft-Hansen, Ninna Nyberg Sørensen, *The Migration Industry and the Commercialization of International Migration* (Routledge, 2013).

Maneri, Marcello, ‘Media discourse on immigration: Control practices and the language we live’, in: S.Palidda (ed.), *Racial criminalization of migrants in 21st Century* (Farnham: Ashgate 2011).

Menz, Georg, ‘The Neoliberalized State and the Growth of the Migration Industry’ in: T. Gammeltoft-Hansen and N. Nyberg Sørensen, *The Migration Industry and the Commercialization of International Migration* (Routledge 2013).

Morris, Julia, ‘In the market of morality’, in: D. Colon and N. Hiemstra, *Intimate Economies of Immigration Detention* (Routledge 2016).

Sandgren, Claes, *Rättsvetenskap för uppsatsförfattare – ämne, material, metod och argumentation* (3rd ed., Nordstedts Juridik, Stockholm, 2015).

Palidda, Salvatore, ‘A Review of the Principal European Countries’, in: S.Palidda (ed.), *Racial criminalization of migrants in 21st Century* (Farnham: Ashgate 2011).

Wilsher, Daniel, *Immigration Detention* (Cambridge University Press 2012).

Journal articles and working papers

Andersson, Ruben ‘Europe’s failed ‘fight’ against irregular migration: ethnographic notes on a counterproductive industry’ (2016) Journal of Ethnic and Migration Studies 42:7, 1055-1075.

Bacon, Christine ‘The evolution of immigration detention in the UK: the involvement of private prison companies’ (2005) Refugee Studies Centre, Oxford Department of International Development.

Baird, Theodore, ‘Who Is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations’ (2016) Global Detention Project Working Paper No. 11. <<https://www.globaldetentionproject.org/who-is-responsible-for-harm-in-immigration-detention-models-of-accountability-for-private-corporations>> accessed 7 March 2017.

Berkhout, Joost, 'Changing Claims and Changing Frames in the Politics of Migration in Western Europe, 1995 – 2009', (2012) SOM Working Paper No. 2012-09 <<http://dx.doi.org/10.2139/ssrn.2168713>> accessed 7 March 2017.

Boin, A, James, O and Lodge, M 'Trends in the Control of Prisons in Europe: New Public Management or Europeanisation?' (2004) Paper presented to Panel 'Reforming the Governance of the Public Sector', Political Studies Association Annual Conference, University of Lincoln, April 6-8.

Bosworth, Mary, 'Border Criminologies: Assessing the Changing Architecture of Crime and Punishment' (2016) Global Detention Project Working Paper No. 10. < www.globaldetentionproject.org/border-criminologies-assessing-the-changing-architecture-of-crime-and-punishment> accessed 7 March 2017.

Burnett, J and Chebe, F 'Captive labour: asylum seekers, migrants and employment in UK immigration removal centres' (2010) *Race & Class* 51(4):95-103.

Castles, Stephen, 'Towards a sociology of forced migration and social transformation' (2003) *Sociology*, 37(1), 12-34. <<https://doi.org/10.1177/0038038503037001384>> accessed 10 January 2017.

De Giorgi, Alessandro, 'Immigration control, post-Fordism, and less eligibility: A materialist critique of the criminalization of immigration across Europe' (2010) *Punishment & Society*, Vol. 12, No. 2, pp. 147–167

Flynn, Michael, 'Capitalism and Immigration Control: What Political Economy Reveals about the Growth of Detention Systems' (2016c) Global Detention Project Working Paper No. 16. <www.globaldetentionproject.org/wp-content/uploads/2016/10/Matthew-Flynn-GDP-Working-Paper-Oct-2016.pdf> accessed 7 March 2017.

Flynn, Michael, 'From Bare Life to Bureaucratic Capitalism: Analyzing the growth of the Immigration Detention Industry as a Complex Organisation' (2016a) *Contemporary Readings in Law and Social Justice* 8(1): 70-97.

Flynn, M and Cannon, C 'The Privatization of Immigration Detention: Towards a Global View' (2009) A Global Detention Working Paper. <<http://dx.doi.org/10.2139/ssrn.2344196>> accessed 7 March 2017.

Lahav, Gallya, 'Immigration and the State: The Devolution and Privatisation of Immigration Control in the EU' (1998) *Journal of Ethics and Migration Studies* 24(4):675-694.

Leerkes, A and Broeders, D ‘A Case of Mixed Motives? Formal and Informal Functions of Administrative Immigration Detention’ (2010) British Journal of Criminology, Vol. 50, Issue 5; 830-850.

Majcher, Izabella, “Crimmigration” in the European Union through the Lens of Immigration Detention’ (2013) Global Detention Project Working Paper No. 6. <<https://ssrn.com/abstract=2340566>> accessed 7 March 2017.

McDonald, D ‘Public Imprisonment by Private Means: The Remergance of Private Prisons and Jails in the United States, the United Kingdom and Australia’ (1994) British Journal of Criminology 34: 28-48.

Parkin, Joanna, ‘The Criminalisation of Migration in Europe: A State-of-the-Art of the Academic Literature and Research’ (2013) CEPS Paper in Liberty and Security in Europe, no 13.

Parkin, Joanna, ’EU Home Affairs Agencies and the Construction of EU Internal Security’ (2012) CEPS Liberty and Security in Europe Papers, Centre for European Policy Studies, Brussels.

Stumpf, John, ‘The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power’ (2006) American University Law Review vol. 56 no,2. <<https://ssrn.com/abstract=935547>> accessed 7 March 2017.

Vollmer, Bastian A. ‘Policy Discourses on Irregular Migration in the EU – ‘Number Games’ and ‘Political Games’’ (2011) European Journal of Migration and Law, Vol. 13, pp. 317–339.

Reports

All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration, ‘The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom’ (2016) <<https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>> accessed 7 March 2017.

Akkerman, M ’Border Wars: The Arms Dealers Profiting on Europe’s Refugee Tragedy’ (Transnational Institute 2016) <www.tni.org/en/publication/border-wars> accessed 7 March 2017.

Amnesty International, ’The Human Cost of Fortress Europe’ (July 2014) <www.amnesty.eu/content/assets/Reports/EUR_050012014__Fortress_Europe_complete_web_EN.pdf> accessed 7 March 2017.

Amnesty International, ‘Refugees endangered and dying due to EU reliance on fences and gatekeepers’ (17 November 2015) <www.amnesty.org/en/latest/news/2015/11/refugees-endangered-and-dying-due-to-eu-reliance-on-fences-and-gatekeepers/> accessed 7 March 2017.

Arbogast, L 'Migrant detention in the European Union: a thriving business: Outsourcing and privatisation of migrant detention' (Migreurop 2016) <www.migreurop.org/IMG/pdf/migrant-detention-eu-en.pdf> accessed 7 March 2017.

Asylum Information Database, 'Mind the Gap: An NGO perspective on challenges to accessing protection in the Common European Asylum System' (2014) Annual report 2013/2014, Brussels, <www.asylumineurope.org/sites/default/files/shadow-reports/aida_annual_report_2013-2014_0.pdf> accessed 7 March 2017.

Ginn, E, 'Outsourcing abuse: the use and misuse of state-sanctioned force during detention and removal of asylum seekers' (2008 Medical Justice). <www.medicaljustice.org.uk/wp-content/uploads/2016/03/outsourcing-abuse.pdf> accessed 7 March 2017.

Global Detention Project and Access Info Europe, 'The Uncounted: Detention of Migrants and Asylum Seekers in Europe' (2015) <www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe> accessed 7 March 2017.

International Detention Coalition, 'Briefing Paper: Does Detention Deter?' (2015a) p. 2. <http://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web.pdf> accessed 1 March 2017.

International Detention Coalition, 'There are alternatives (Revised Edition)' (2015b) <<http://idcoalition.org/publication/view/there-are-alternatives-revised-edition/>> accessed 3 March 2017.

Human Rights Watch, 'Bulgaria: Pushbacks, Abuse at Borders' (20 January 2016). <www.hrw.org/news/2016/01/20/bulgaria-pushbacks-abuse-borders> accessed 7 March 2017.

Lunaria, 'An Inhumane Cost: Public spending to combat illegal immigration in Italy' (Rome 2013) <www.lunaria.org/wp-content/uploads/2013/07/Inhuman_cost.pdf> accessed 7 March 2017.

National Audit Office, 'Yarl's Wood Immigration Removal Centre' (2016) Report by the Comptroller and Auditor General. <www.nao.org.uk/wp-content/uploads/2016/07/Yarls-Wood-Immigration-Removal-Centre.pdf> accessed 7 March 2017.

Prison Reform Trust, 'Private Punishment: Who Profits?' (2005) <www.prisonreformtrust.org.uk/portals/0/documents/private%20punishment%20who%20profits.pdf> accessed 7 March 2017.

Legal sources and official documents

EU

Legislation

The Charter of Fundamental Rights of the European Union (2016/C 202/02), 7 June 2016, OJ C 202/389.

Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, OJ 56/850.

Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257/13.

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, 19 June 1990 O.J L 239

Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, O.J L 187/45.

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, OJ L. 348/98-348/107.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60.

Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96.

Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31.

Treaty Establishing the European Community, Rome Treaty, 25 March

1957.

Treaty on European Union (Maastricht text), July 29 1992, O.J. C191/1.

Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts, 10 November 1997 O.J C340/1

The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 13 December 2004, 2005/C 53/01.

Reports, publications and press releases

EC, 'EU-Turkey Statement', Press Release, 144/16 (18 March 2016) <www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> accessed 7 March 2017.

EC, 'Completing the reform of the Common European Asylum System: towards an efficient fair and humane asylum policy', Press Release, IP/16/2433 (13 July 2016) <http://europa.eu/rapid/press-release_IP-16-2433_en.htm> accessed 7 March 2017.

EC, 'The European Security Research and Innovation Forum (ESRIF) - Public-Private Dialogue in Security Research', MEMO/07/346 (11 September 2016) <http://europa.eu/rapid/press-release_MEMO-07-346_en.htm> accessed 7 March 2017.

The European Security Research and Innovation Forum, 'Final Report' (December 2009) <http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=3888&lang=en> accessed 7 March 2017.

European Union Agency for Fundamental Rights, *Fundamental rights of migrants in an irregular situation in the European Union* (Luxembourg: Publications Office of the European Union, 2011).

European Parliament Directorate General for Internal Policies, 'Review of security measures in the Research Framework Programme' (2010) <[www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509979/IPOL-LIBE_ET\(2014\)509979_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/509979/IPOL-LIBE_ET(2014)509979_EN.pdf)> accessed 7 March 2017.

European Court of Human Rights and, European Union Agency for Fundamental Rights *Handbook on European law relating to asylum, borders and immigration* (Luxembourg: Publications Office of the European Union, 2016)

EC, 'The Hotspot Approach to Managing Exceptional Migratoey Flows' <<https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we>>

do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf

Council of Europe

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.

UN

Treaties and conventions

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948.

UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

Reports and press releases

UNHCR, 'Over one million sea arrivals reach Europe in 2015' (30 December 2015) <www.unhcr.org/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html> accessed 27 february 2017

UNHCR, 'Global Trends: Forced Displacement in 2015' (2016) <<http://www.unhcr.org/576408cd7.pdf>> accessed 20 february 2017

UNHCR, 'Figures at a Glance' (2016) <<http://www.unhcr.org/figures-at-a-glance.html>> accessed 20 february 2017

UNHCR, 'Mediterranean Sea: 100 people reported dead yesterday, bringing year total to 5,000' (23 December 2016) <www.unhcr.org/news/briefing/2016/12/585ce804105/mediterranean-sea-100-people-reported-dead-yesterday-bringing-year-total.html> accessed 7 March 2017.

UNHCR, 'Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants' (2011) PPLA/2011/01.Rev.1, Geneva.

UN Human Rights Committee (HRC), 'Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland' (17 August 2015, CCPR/C/GBR/CO/7)

The UK

Legislation

Human Rights Act 1998

Immigration Act 2014

Immigration Act 2016

Official documents

The Home Office, 'Serco re-appointed to manage Yarl's Wood Immigration Removal Centre' (24 November 2014) <www.gov.uk/government/news/serco-re-appointed-to-manage-yarls-wood-immigration-removal-centre>

House of Lords and House of Commons Joint Committee on Human Rights, 'The Meaning of Public Authority under the Human Rights Act' (2007) Ninth Report of Session 2006–07, London.

HM Inspector of Prisons, 'Report on unannounced inspection of Yarl's Wood Immigration Removal Centre, 17-28 June and 30 Sept – 1 Oct 2013' (2013). <www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf> accessed 7 March 2017.

HM Chief Inspector of Prisons, 'Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre, 13 April – 1 May 2015' (2015). <www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/08/Yarls-Wood-web-2015.pdf> accessed 7 March 2017.

HM Chief Inspector of Prisons, 'Report on an unannounced inspection of Heathrow Immigration Removal Centre, Harmondsworth site, 7–18 September 2015' (2016). <<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2016/02/Harmondsworth-web-2015.pdf>> accessed 7 March 2017.

Prisons and Probation Ombudsman, 'Investigation into the death of a man on 10 February 2013 while a detainee at Harmondsworth Immigration Removal Centre' (2014) <www.ppo.gov.uk/wp-content/uploads/2015/10/H176-13-Death-of-a-male-detainee-in-hospital_Harmondsworth-IRC_10.02.13_Nat.pdf#view=FitH> accessed 7

March 2017.

UK Government, 'Dungracel House IRC', Contract Finders archive <<https://data.gov.uk/data/contracts-finder-archive/contract/699454/>> accessed 20 February 2017

Other sources

News articles and press releases

Allison, R 'Judge slates Group 4 in Yarl's Wood riots' The Guardian (5 August 2003) <www.theguardian.com/uk/2003/aug/05/immigration.immigrationandpublicservices> accessed 7 March 2017.

Amnesty International Germany, 'Traiskirchen Symptom systematischer Mängel im Umgang mit Asylwerbern' (13 August 2015) <<https://www.amnesty.at/de/traiskirchen-pa2/>> accessed 20 February 2017.

BBC, 'Hungary builds border fence to control migrant numbers' (6 August 2015) <www.bbc.com/news/world-europe-33799208> accessed 7 March 2017.

BBC News, 'Austria refugee camp branded 'shameful' by Amnesty International' (14 August 2015) <www.bbc.com/news/world-europe-33940654> accessed 20 February 2017.

Channel 4, 'Yarl's Wood: undercover in the secretive immigration centre' (2 March 2015) <www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation> accessed 7 March 2017.

Cowbrun, A 'Suicide attempts at UK immigration removal centres averaged one a day in 2015, official figures reveal' *The Independant* (6 April 2016) <www.independent.co.uk/news/uk/suicide-attempts-at-uk-immigration-removal-centres-averaged-one-a-day-in-2015-a6971811.html> accessed 7 March 2017.

Crouch, D 'Swedish private housing sector accused of profiting from refugees' *The Guardian* (18 October 2016) <www.theguardian.com/world/2015/oct/18/swedish-private-housing-sector-refugees> accessed 20 February 2017.

Fenton, S 'Home Office refuses to reveal whether women in Yarl's Wood have been raped in case it 'damages the commercial interests' of companies', *The Independent* (12 June 2016) <www.independent.co.uk/news/uk/politics/home-office-refusing-to-reveal-whether-women-in-yarls-wood-have-been-raped-to-protect-the-commercial>

a7077736.html> accessed 7 March 2017.

Fotiadis, A ‘New Security on Greek Islands Reduces Access’ *NewsDeeply* (15 June 2015)

<www.newsdeeply.com/refugees/community/2016/06/15/new-security-on-greek-islands-reduces-access> accessed 20 February 2014.

Hamilos, P ‘Asylum centre wrecked by fire’ *The Guardian* (15 February 2002)

<www.theguardian.com/uk/2002/feb/15/immigration.immigrationandpublicservices4> accessed 7 March 2017.

Hruby, D ‘Austria held thousands of refugees in a squalid camp’ *USA Today* (12 October 2015)

<www.usatoday.com/story/news/world/2015/10/12/austria-migrants-global-post/73806236/> accessed 20 February 2017

Inskeep, S ‘Ex-Aid Worker: Abuse Of Refugee Children On Nauru Was Mostly Ignored’ *NPR* (24 August 2016)

<www.npr.org/sections/parallels/2016/08/24/491170178/ex-aid-worker-abuse-of-refugee-children-on-nauru-was-ignored> accessed 15 January 2017

Jordan, B ‘From hostel operators to traffickers, Europe's migrant crisis proves boon for some businesses’ *U.S News* (27 September 2015) <www.usnews.com/news/business/articles/2015/09/27/migration-crisis-proves-boon-for-some-businesses> accessed 7 March 2017.

Knight, B ‘Turning a profit from the refugee crisis’ *Deutsche Welle* (25 February 2016) <www.dw.com/en/turning-a-profit-from-the-refugee-crisis/a-19075513> accessed 7 March 2017.

Krasimirov, A ‘Bulgaria to use army to help guard border in migrant crisis’ *Reuters* (18 February 2016) <www.reuters.com/article/us-europe-migrants-bulgaria-idUSKCN0VR19E> accessed 7 March 2017.

Lewis, P and Taylor, M ‘Staff on deportation flights played 'Russian roulette' with lives’ *The Guardian* (8 February 2011) <www.theguardian.com/uk/2011/feb/08/staff-deportation-flights-g4s> accessed 25 February 2017

Mitie, ‘Mitie awarded £180m contract with the Home Office’ *Mitie Press release* (11 February 2014) <www.mitie.com/news-centre/regulatory_announcements/2014/1898898> accessed 17 February 2017.

NATO, ‘Defence Ministers take forward NATO-EU cooperation’, Press Release (27 October 2016)

<http://www.nato.int/cps/en/natohq/news_136844.htm> accessed 7 March 2017.

Nenov, S ‘Greece condemns Macedonia tear gas and rubber bullets against migrants’, *Reuters* (10 April 2016) <www.reuters.com/article/us-europe-migrants-greece-teargas-idUSKCN0X70CD> accessed 7 March 2017.

Neurath, C ‘Usel hygien på Bert Karlssons boenden’ *SvD Näringsliv* (8 October 2015) <www.svd.se/usel-hygen-pa-bert-karlssons-boenden> accessed 21 February 2017.

Nielsen, N ‘Private security firms cash in on guarding EU borders’ *EUobserver* (23 September 2013) <<https://euobserver.com/priv-immigration/121454>> accessed 20 February 2017;

Nielsen, N ‘Private security firms bid on Greek asylum centres’ *EUobserver* (2 April 2014) <<https://euobserver.com/justice/123711>> accessed 20 February 2014.

Siegfried, K ’Private security firms prosper as more migrants detained’ Interview with T. Gammeltoft-Hansen *IRIN* (12 March 2014) <www.irinnews.org/analysis/2014/03/12/private-security-firms-prosper-more-migrants-detained> accessed 2 March 2017.

Taylor, D ‘Dossier calling for Yarl’s Wood closure chronicles decade of abuse complaints’ *The Guardian* (15 June 2015) <www.theguardian.com/uk-news/2015/jun/15/yarls-wood-report-calling-for-closure-decade-abuse-complaints> accessed 7 March 2017

Taylor, D ’Seriously ill detainee was shackled hours before he died’ (*The Guardian* 30 July 2016) <www.theguardian.com/uk-news/2016/jul/30/home-office-report-exposes-treatment-of-sick-detainee-shackled-hours-before-he-died> accessed 7 March 2017

Taylor, M and Booth, R ‘G4S guards found not guilty of manslaughter of Jimmy Mubenga’ *The Guardian* (16 December 2014) <www.theguardian.com/uk-news/2014/dec/16/g4s-guards-found-not-guilty-manslaughter-jimmy-mubenga> accesed 30 January 2017.

Townsend, M ‘Yarl’s Wood abuse allegations: Tanja’s story’ *The Guardian* (14 September 2013) <www.theguardian.com/uk-news/2013/sep/14/yarls-wood-immigrant-sex-abuse-tanja>

Townsend, M ‘Serco whistleblower’s Yarl’s Wood sex claim’ *The Guardian* (24 May 2014) <www.theguardian.com/uk-news/2014/may/24/serco-whistleblower-yarls-wood-pressure-immigration>

Townsend, M ‘Sexual abuse allegations corroborated at Yarl’s Wood immigration centre’, *The Guardian* (21 September 2013)

<www.theguardian.com/uk-news/2013/sep/21/sexual-abuse-yarls-wood-immigration>

Travis, A 'Yarl's Wood detention centre staff replaced by 'self-service kiosks' *The Guardian* (7 July 2016) <www.theguardian.com/uk-news/2016/jul/07/yarls-wood-immigration-detention-centre-staff-replaced-by-self-service-kiosks> accessed at 7 March 2017

Travis, A 'G4S to take over welfare support for families facing deportation' *The Guardian* (9 February 2017)< www.theguardian.com/uk-news/2017/feb/09/g4s-welfare-support-families-children-deportation-gatwick> accessed on 10 February 2017

Thorpe, N 'Migrant crisis: Bulgaria tightens border with Turkey' *BBC* (3 June 2016) <www.bbc.com/news/world-europe-36435420>

Websites

Detention Watch Network, 'Detention 101' <www.detentionwatchnetwork.org/issues/detention-101> accessed 20 February 2017

Federal business Opportunities, 'Southwest Border Transportation, Medical Escort and Guard Services' <www.fbo.gov/index?s=opportunity&mode=form&id=91edd01479626bfcaf64a03d99649c3a&tab=core&_cview=1> accessed 25 February 2017.

Frontex, 'About the agency' (2017) <<http://frontex.europa.eu/pressroom/faq/about-the-agency/>>

G4S, 'Financial Statement', <www.g4s.com/en/Investors/Financial%20Statements/> accessed 20 February 2016

G4S, 'Where we operate', <www.g4s.com/en/Who%20we%20are/Where%20we%20operate/> accessed 20 February 2017.

Geo Group UK, 'Welcome to The GEO Group UK Ltd' <www.geogroup.co.uk/index.php?Page_ID=2053&Pindex=1&Sindex=1> accessed 20 February 2017.

Global Detention Project, 'Italy Immigration Detention' (updated November 2012) <<https://www.globaldetentionproject.org/countries/europe/italy>> accessed 1 March 2017.

Global Detention Project, 'Germany Immigration Detention' (updated

October 2014)
<<https://www.globaldetentionproject.org/countries/europe/italy>> accessed 3 March 2017.

Global Detention Project, 'Austria Immigration Detention' (updated December 2014)
<<https://www.globaldetentionproject.org/countries/europe/austria>> accessed 1 March 2017.

Global Detention Project, 'Netherlands Immigration Detention' (updated November 2016)
<<https://www.globaldetentionproject.org/countries/europe/netherlands>> accessed 1 March 2017.

Global Detention Project, 'Hungary Immigration Detention' (updated September 2016)
<www.globaldetentionproject.org/countries/europe/hungary> accessed 3 March 2017.

Global Detention Project, 'Australia Immigration Detention' (updated September 2008) <<https://www.globaldetentionproject.org/countries/asia-pacific/australia>> accessed 3 March 2017.

Migration Observatory, 'Immigration Detention in the UK', (University of Oxford 2016)
<www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/> accessed 20 February 2017

Migrationsverket, 'New laws in 2016' (2016)
<www.migrationsverket.se/English/About-the-Migration-Agency/New-laws-in-2016.html> accessed 2 February 2016.

Mitie, 'Specialist services' <www.mitie.com/services/specialist-services> accessed 20 February 2017.

Serco, 'Secure Immigration Detention' <www.serco.com/uk/sector-expertise/immigration/secure-immigration-detention> accessed 20 February 2017.

Swedish Migration Board 'Förvar' (updated 28 February 2017)
<<https://www.migrationsverket.se/Om-Migrationsverket/Pressrum/Fokusområden/Forvar.html>> accessed 7 March 2017.

Table of cases

International Court of Justice

Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), 26 February 2007.

UN Human Rights Committee

A v. Australia, no. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993, 30 April 1997.

Shafiq v. Australia, no. 1324/2004, UN Doc CCPR/C88/D/1324/2004, 13 November 2006.

European Court of Human Rights

Airey v. Ireland, app. no. 6289/73, 9 October 1979.

A. and Others v. the United Kingdom, app. no. 3455/05, 19 February 2009.

Al-Jedda v. the United Kingdom, app. no. 27021/08, 7 July 2011.

Costello-Roberts v. the United Kingdom, app. no. 13134/87, 25 March 1993.

J.N. v. the United Kingdom, app. no. 37289/12, 19 May 2016.

López Ostra v. Spain, app. no. 16798/90, 9 December 1994.

Marckx v. Belgium, app. no. 6833/74, 13 June 1979.

Storck v. Germany, app. no. 61603/00, 16 June 2005.

Van det Mussele v. Belgium, app. no. 8919/80, 23 November 1983.

X and Y v. the Netherlands, app. no. 8978/80, 26 March 1985.

Young, James and Webster v. the United Kingdom, app. nos. 7601/76 and 7806/77, 13 August 1981.

European Court of Justice

Case C-30/77 *Régina v. Pierre Bouchereau* [1977] ECR 199.

Case C-413/99 *Baumbast and R v. Secretary of State for the Home Department* [2002] ECR I-7091.

Case C-215/03 *Salah Oulane v. air Minister voor Vreemdelingenzaken en Integratie* [2005] ECR I-1215.

Case C-61/11 *El Dridi, alias Soufi Karim*, [2011] ECR I-03015.

Cases C-473/13 and C-514/13 *Bero v. Regierungspräsidium Kassel; Bouzalmate v. Kreisverwaltung Kleve* EU:C:2014:2095.

Case C-474/13 *Pham v. Stadt Schweinfurt, Amt für Meldewesen und Statistik*, EU:C:2014:2096.

UK Courts

R (Nouazli) v Secretary of State for the Home Department [2016] UKSC 16.

YL v. Birmingham City Council and others [2007] UKHL 27.

S, R (on the application of) v The Secretary of State for the Home Department [2011] EWHC 2120.

