

Written version of the oral statement made on 2 September 2014 by Ulrik Spliid, Senior Legal Advisor, Danish Institute for Human Rights, at the Global Consultation on the Right to Challenge the Lawfulness of Detention before Court, 1-2 September 2014 in Geneva

On migration related detention

In Denmark it is possible to detain asylum seekers administratively in certain cases, e.g. if there is considered to be a real risk of abscondment or if the asylum seeker in question is not considered to cooperate sufficiently. If such detention lasts more than three days, it must be put before a judge. I believe it was Mr Ewans who yesterday questioned whether it was reasonable that it is the person detained who has to take the initiative for a *habeas corpus* hearing since this person is normally in a very vulnerable case. As mentioned, this is not the case in Denmark in these instances.

The law clarifies that the judge must, among other things, assess that an individual evaluation has been the basis of the detention and that less serious alternatives could not be used.

In cases monitored by Amnesty International, the judge in all fifty cases maintained detention and did not seem to consider whether less serious alternatives could have been used. I imagine that it is not only in Denmark that judicial review is sometimes more of a rubber stamp – or at least seems to be only a rubber stamp. This is another issue than the issue of corruption yesterday and would seem to be an issue even in Denmark whose judges do not have a reputation for corruption. And even though the law clearly spells out the considerations to be made when considering lawfulness of detention.

I wonder what the experts on the panel think the Working Group can do in the principles and guidelines to deal with this issue? In any event I hope that the Working Group will consider the problem of how to make sure judicial review does not end up simply being a rubber stamp.

Even vulnerable asylum seekers are subject to administrative detention in Denmark. This includes psychologically vulnerable persons, pregnant women, children and torture victims.

Among the recommendations by the Danish Institute for Human Rights in its 2013 Status Report is for the authorities to institute compulsory examinations of the health of asylum seekers that the authorities wish to detain. Such examination should include both medical and psychological expertise. Maybe this is something the Working Group could also consider for their guidelines?

Thank you.