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Section 4.8. Aspects of detention involving asylum applicants and former applicants

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Detention is clearly defined in the recast Reception Conditions Directive, Article 2(h) as the confinement of an applicant for international protection by a Member State within a particular place where the applicant is deprived of the freedom of movement. An exhaustive list of legal grounds under which applicants can be detained during the asylum procedure, detailed procedural safeguards (for example on the length of detention and judicial review) and conditions of detention are defined in the:

- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection;
- 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;
- Dublin III Regulation; and
- 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 following a negative final decision on international protection.

In practice, detention may occur at different stages of the asylum procedure:

- At the start of the asylum procedure when an individual lodges an application for international protection, for example in order to determine or verify the applicant’s identity or nationality;
- Pending the examination of a claim for international protection based on grounds set out in the EU asylum acquis, for instance to decide on the applicant’s right to enter the territory, determine the elements of the asylum application which could not be obtained without detention, in particular if there is a risk of the applicant absconding, or organise a transfer to another Member State under the Dublin procedure; or
- Upon completion of the asylum procedure when a person, who had previously applied for international protection and the request was rejected, is detained pending a return to the country of origin.

The ECHR and international human rights conventions supplement the CEAS framework by setting additional constraints and safeguards during detention, mainly to protect against inhuman or degrading treatment and the freedom of movement.

In 2021, shortcomings in detention practices and conditions, particularly for applicants with vulnerabilities, were scrutinised by international, European and national monitoring and judicial organisations, such as CAT, Council of Europe's Committee for the Prevention of Torture (CPT), national Ombudspersons, the ECtHR and national courts, in addition to UNHCR800 and civil society organisations.

icon presenting institutional changes and legislative reforms

4.8.1. Institutional changes and legislative reforms

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4.8.2. Recourse to detention

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4.8.3. Alternatives to detaining applicants

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4.8.4. Conditions in detention facilities

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icon presenting The interplay between the use of detention and the steps of the asylum procedure

4.8.5. The interplay between the use of detention and the steps of the asylum procedure

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icon presenting detention of children and applicants with special reception needs

4.8.6 Detention of children and applicants with special reception needs

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- 800Under its statutory role, UNHCR may obtain from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them. UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V).

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