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icon presenting recourse to detention

Detention has been frequently used to address a mass influx of migrants at the borders or for enforced returns *(see Section 4.15),* and its excessive or arbitrary use continues in some countries.

The UN CAT raised concerns about the prevalence of detention for applicants for international protection at the borders of Belgium,815 which was considered by the Constitutional Court as necessary for effective border control under the Aliens Act. The Committee recommended for Belgium to cease this practice, based on ECtHR case law which affirmed that automatic detention at borders was problematic. As underlined by the Committee, detention should be used only in exceptional circumstances and as a last resort, on the basis of an individual assessment of each case and if other less coercive measures cannot be applied effectively.

The use of detention has also been voiced by NGOs in Greece. For instance, the detention of newly-arrived asylum seekers in closed centres as a systematic practice and the unavailability of alternatives to detention were underlined by Refugee Support Aegean, while the Greek Council for Refugees (GCR) and Oxfam noted than nearly 3,000 migrants were in detention as of June 2021. In addition, people remain detained a pending removal, despite the suspension of readmissions to Turkey since March 2020.816

Following the complaint submitted by Equal Rights Beyond Borders on behalf of 19 detainees in the Kos Pre-Removal Detention Centre, the Greek Ombudsperson issued an opinion requesting the authorities to “reconsider the decision of administrative detention”.817The opinion also pointed out the long detention periods of over 6 months during a global pandemic and the generic detention orders that failed to examine individual needs and circumstances, particularly for those with serious vulnerabilities (including survivors of sexual and gender-based violence, victims of trafficking, and people with medical conditions with a higher risk for complications from COVID-19 infection). Furthermore, the Administrative Court of Syros ordered the lifting of the exit ban which was imposed on residents of the CCACs.

These issues were also underlined by METAdrasi when its lawyers argued before the Rhodes Administrative Court of First Instance on behalf of two Syrian citizens. They claimed that the detention of the applicants lacked a legal basis and violated the ECHR, Article 5(1) as their readmission to Turkey was impracticable and had been suspended since 16 March 2020 for an

indefinite period of time.818 The two Syrians were released.

NGOs in Italy reported to the Council of Europe about the continuation of unlawfully detaining foreign nationals without the necessary guarantees and remedies.819 In March 2021, the Committee of Ministers, supervising the execution of judgment *Khlaifia and Others* v *Italy*, decided not to end the supervision procedure and requested additional information on the remedies invoked by foreign nationals in detention.820 The examination of the case was closed in December 2021 when legislative interventions were adopted by the Italian authorities to regulate the administrative detention of migrants in reception centres, provide a clear and accessible legal basis, require the authorities to provide information about rights and the grounds for detention, and provide an automatic judicial review of the lawfulness of any decision to detain.821 Furthermore, NGO Coalizione Italiana Libertà e Diritti Civili (CILD) pointed out that detention at Italian repatriation centres was “unnecessarily oppressive, excessively burdensome, and dramatically inhumane”.822

Following a legislative reform in Lithuania, all newly-arrived asylum seekers from Belarus are deprived of the freedom of movement.823 This policy, which aims to address the mass influx of foreigners, has been questioned by civil society organisations824 and international organisations (for example, the Council of Europe’s Commissioner for Human Rights)825 for leading to mandatory and prolonged detention. To this end, the UN CAT urged Lithuania to ensure safeguards against unlawful or arbitrary detention, refrain from detention of families with children and vulnerable asylum seekers, and conduct a thorough, prompt and independent investigation into all instances of alleged torture and ill treatment in places of immigration detention.826

Similar challenges were encountered in Poland, where two reception centres for asylum seekers were temporarily lent to the Border Guard and turned into detention centres. In addition, the training centre of the Ministry of National Defence in Wędrzyn was lent to the Border Guard for purpose of detention, and two Border Guard stations in proximity of the Belarusian border (Dubicze Cerkiewne and Połowce) became centres for the registration of foreigners, in which the foreigners were held after being issued a decision on detention before being transported to a detention centre.827

The widespread use of arbitrary detention was strongly noted in Malta by the CPT, which urged the authorities to address the serious issues outlined in its report and reform the immigration detention system with the support of the EU and the Council of Europe, as appropriate.828 In reply, Malta noted that the difficulties result from the immense challenges linked with high influxes that are ultimately recognised by the CPT in its report.829 Notwithstanding these extreme pressures, the government of Malta noted that it has consistently remained committed to meeting its international obligations and to safeguard the minimum standards of a humane and safe reception of migrants.

The restriction of movement of asylum seekers in Ceuta and Melilla,830 and more recently on the Canary Islands,831 were the subject of recurrent complaints to the Spanish Ombudsperson. The Ombudsperson has reiterated for many years that asylum seekers have the fundamental right to freedom of movement throughout Spanish territory, which has been reaffirmed by the

Supreme Court. Due to the continuous complaints, the Ombudsperson formulated a reminder of legal duties to the General Directorate of the Police.832

Challenges due to arbitrary detention without a detention order or an individual assessment were reported in Croatia833 and Hungary,834 while similar cases were brought before the courts in Cyprus and Greece.

The UN CAT expressed concern on the use of detention in Sweden and the placement of asylum seekers in remand prisons for security or other exceptional reasons.835 The Migration Court of Appeal in Sweden annulled a detention order, stating that the decision to detain an asylum applicant under the Swedish Aliens Act was not consistent with the Reception Directive, Article 8(3d).

In Portugal, the practice remained that asylum seekers who apply for international protection while in detention and pending a removal procedure are detained, including in airport detention facilities.836 The detention of asylum seekers, in such circumstances, are always based on a court order. In Czechia, detention was also reported to be widely applied.837

As an example of good practices, in Finland, with the exception of a few cases, foreigners in detention during the pandemic were released, according to the Parliamentary Ombudsperson.838

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