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3.7.1.1. Comprehensive changes in detention regimes

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The Italian Law No 50/2023 brought several changes to the detention regime. New return and repatriation centres (CPRs) may be established and maintained with a derogation from some laws – for example, rules on procurement – until 31 December 2025 to ensure that centres can be opened quickly. Applicants may be detained to determine elements on which the asylum claim is based and which cannot be established without detention, within the limits of places in CPRs. Furthermore, the circumstances indicating a risk of absconding were extended to cases when the applicant does not have a passport or when the applicant provides a false identity. UNHCR noted that applicants often lack a travel document due to the circumstances in the country of origin and the need to flee suddenly, and this may not be an indication of a person's intention to evade identity checks or a Dublin transfer.623Italian authorities stated that the new regime was compliant with the recast RCD, Article 8.

Applicants may also be detained in hotspots or CPRs when lodging an application at the border to assess their right to enter the country if they arrive from a safe country of origin or by evading relevant border checks. The law requests applicants to provide a financial guarantee as an alternative to detention. Shortly after the entry into force of the law, the Tribunal of Catania delivered a series of judgments for applicants with this profile, noting that the Questura ordered detention without a reasoned detention order and without examining the necessity and proportionality of the measure.624The Ministry of the Interior appealed against the Tribunal of Catania judgments before the Supreme Court of Cassation, which then referred the matter to the CJEU for a preliminary ruling. For applicants awaiting a Dublin transfer, the law allows their detention in CPRs if there is a significant risk of absconding, but only for the time strictly necessary for the execution of the transfer and for a maximum of 6 weeks. For immigration detention outside the asylum context, the maximum time limit was extended from 150 to 180 days.625

In Croatia, the legislation on the restriction of movement for applicants was substantially amended. The law now clearly states the grounds for applying such restrictions, including multiple consecutive attempts to leave the country during an asylum procedure. The decision on the restriction is regularly reviewed by the administrative court if it lasts longer than 1 month and if there is a change in circumstances that may affect the legality of the decision. The court also reviews the decision upon request by the applicant.626

The German Act on the Improvement of Removals, presented in 2023 and voted in the Federal Parliament in January 2024, changed the legal framework pending a return, and for example, allowed for the detention of an applicant if the grounds for detention apply when the application was lodged.627In its input to this report, ECRE underlined that this is relevant for cases when an applicant files a subsequent application to avoid an imminent removal.628

The Luxembourgish Law on International and Temporary Protection was amended to include nine reasons when a person can be detained awaiting a Dublin transfer, and the circumstances for presuming that there was a significant risk for absconding were adjusted.629

The length of immigration detention was revised in Czechia, where detention can be extended to a maximum of 180 days instead of 120 days. At the same time, there is a shorter, 15-day period to appeal this decision, instead of 30 days.630The Czech Supreme Administrative Court underlined that authorities cannot justify detention based mainly on the fact that the person did not apply for international protection, either in Czechia or another EU Member State. In another case, the regional court in Ostrava confirmed that a request to re-examine the reasons for detention should be decided within 5 days. The law does not specify this deadline, but the court noted that authorities need to decide on the legality of detention within 5 days after a person applies for international protection from immigration detention.

The Supreme Court in Poland delivered a landmark judgment which clarified the rules for the detention of applicants for international protection, as well as detention pending a return.

The Slovenian Administrative Court ruled that confining applicants to their rooms in the reception facility of the asylum centre (which is a special facility within the reception accommodation offering pre-reception) amounts to detention and does not qualify as an alternative to detention.631In another case, the court noted that the applicant's past behaviour during a one-off incident cannot justify detention. This measure must be a last resort to protect public order and security.

The Finnish Ministry of the Interior started working on amendments to the grounds and length of immigration detention. Foreigners could be detained on grounds of public order, security and having committed serious offences. The possible length of detention is foreseen to be extended to 12 months in place of the current 6 months.632

The draft of the new Belgian Migration Code spells out that children cannot be held in closed centres. This has already been the case but was not codified in national legislation.633

- 623United Nations High Commissioner for Refugees (UNHCR) | Alto Commissariato delle Nazioni Unite per i Refugiati. (May 2023). *Legge 5 maggio 2023, n.50 di conversione, con modificazioni, del decreto-legge 10 marzo 2023, n.20, recante disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare. Nota tecnica dell'Ufficio dell'Alto Commissariato delle Nazioni Unite per i Rifugiati (UNHCR) [Law of 5 May 2023, No 50 converting, with amendments, Decree-Law No 10 of March 2023, No 20, containing urgent provisions on the flow of legal entry of workers foreigners and the prevention of and fight against irregular immigration. Technical note of the United Nations High Commissioner for Refugees]*.

- 624CanestriniLex. (29 September 2023). *Italian bail for asylum seekers to avoid detention violates EU law. https://canestrinilex.com/en/readings/italian-bail-for-asylum-seekers-to-avoid-detention-violates-eu-law-catania-court-29923*
- 625Decreto-Legge 10 marzo 2023, n. 20, Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare [Legislative Decree No 20 of 10 March 2023 Urgent provisions on legal flows of foreign workers and on preventing and combating irregular immigration] (2023).

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- 626Zakon o izmjenama i dopunama Zakona o međunarodnoj i privremenoj zaštiti [Act on Amendments to the Law on International and Temporary Protection]. (22 March 2023). https://narodne-novine.nn.hr/clanci/sluzbeni/2023_03_33_581.html
- 627Bundestag stimmt Gesetz zur Verbesserung von Rückführungen zu [Bundestag approves law to improve repatriation]. 18 January 2024.

- 628European Council on Refugees and Exiles. (2023, November 30). Input to the Asylum Report 2024.

- 629Loi du 20 juillet 2023 portant modification de la loi modifiée du 18 décembre 2015 relative à la protection internationale et à la protection temporaire [Law of 20 July 2023 amending the amended Act of 18 December 2015 on international protection and temporary protection] (2023). https://legilux.public.lu/eli/etat/leg/loi/2023/07/20/a445/jo
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- 631Amnesty Internaitonal Slovenia | Amnesty International Slovenije. (2023, June 28). *Upravno sodišče odločilo, da je zapiranje prosilcev za azil protiustavno [Administrative Court rules that imprisoning asylum seekers is unconstitutional]*.

- 632Finnish Ministry of Interior | Sisäministeriö. (2023, October 2). *Sisäministeriössä valmistellaan muutoksia ulkomaalaislain säilöönottoa ja maahantulokieltoa koskeviin säännöksiin [Ministry of the Interior to prepare amendments to provisions on detention and entry bans in the Aliens Act]*. https://intermin.fi/-/sisaministeriossa-valmistellaan-muutoksia-ulkomaalaislain-sailoonottoa-ja-maahantulokieltoa-koskeviin-saannoksiin?languageId=en_US
- 633Council of Ministers | Ministerraad | Conseil des Ministres. (2023, March 17). *Asile et migration : ancrage légal de la politique de retour [Asylum and migration: legal anchoring of return policy]*.

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