

4.8.2. Recourse to detention

4.8.2. 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](#) that 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”.[817](#) The 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 W?drzyn was lent to the Border Guard for purpose of detention, and two Border Guard stations in proximity of the Belarusian border (Dubicze Cerkiewne and Po?owce) 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 *Croatia*⁸³³ 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

815 United Nations, Committee against Torture. (2021, August 25). Concluding observations on the fourth periodic report of Belgium. CAT/C/BEL/CO/4.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fBEL%2fCO%2f4&language=en&pdf=true

816 Greek Council for Refugees | ????????? ?????????? ??? ??? ?????????, & Oxfam International. (2021, November 16). Detention as the Default: How Greece, with the support of the EU, is generalizing administrative detention of migrants. <https://policy-practice.oxfam.org/resources/detention-as-the-default-how-greece-with-the-support-of-the-eu-is-generalizing-621307/>; Amnesty International. (2021, December 2). Greece: Asylum seekers being illegally detained in new EU-funded camp.

<https://www.amnesty.org/en/latest/news/2021/12/greece-asylum-seekers-being-illegally-detained-in-new-eu-funded-camp/>

817 Ombudsman | ?????????? ??? ??????. (2021, June 30). ?????????? ??????? ?????????? ??????? [Administrative detention of foreign citizens]. https://equal-rights.org/site/assets/files/1304/210730_ombudsman_detention_kos-anonym.pdf

818 METAdrasi - Action for Migration and Development | ????????? – ?????? ??? ?? ?????????????? ??? ??? ??????. (2022). Input to the Asylum Report 2022. <https://euaa.europa.eu/sites/default/files/2022-03/metadrasi.pdf>

819 Council of Europe, Committee of Ministers. (2021, October 20). Communication from NGOs (Association for Juridical Studies on Immigration (ASGI), A Buon Diritto Onlus, and Coalizione Italiana Libertà e Diritti Civili (CILD)) (12/10/2021) in the case of Khlaifia and Others v. Italy (Application No. 16483/12). DH-DD(2021)1079. <https://rm.coe.int/0900001680a43c9d>; Association for Juridical Studies on Immigration | Associazione per gli Studi Giuridici sull'Immigrazione. (2021, February 26). Trattenimenti illegittimi: l'Italia non si è ancora adeguata a quanto stabilito dalla CEDU nella sentenza Khlaifia [Unlawful detention: Italy has not yet complied with the ECHR's Khlaifia judgment]. <https://www.asgi.it/asilo-e-protezione-internazionale/trattenimento-illegittimo-centri-hotspot-litalia-sentenza-khlaifia/>

820 Council of Europe, Ministers' Deputies. (2021, March 11). 1398th meeting (DH) 9-11 March 2021 - H46-13 Khlaifia and Others v. Italy (Application No. 16483/12): Supervision of the execution of the European Court's judgments [CM/Del/Dec(2021)1398/H46-13].

[https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22CM/Del/Dec\(2021\)1398/H46-13E%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22CM/Del/Dec(2021)1398/H46-13E%22]})

821 Council of Europe, Committee of Ministers. (2021, December 2). Resolution CM/ResDH(2021)424, Execution of the judgment of the European Court of Human Rights, Khlaifia and Others against Italy. Adopted by the Committee of Ministers on 2 December 2021.

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a4b405

822 Italian Coalition for Civil Liberties and Rights | Coalizione Italiana Libertà e i Diritti civili. (2021). Buchi Neri: La detenzione senza reato nei Centri di Permanenza per i Rimpatri (CPR) [Black holes: Detention without a criminal offence in Return Detention Centres (CPR)]. https://cild.eu/wp-content/uploads/2021/10/ReportCPR_Web.pdf

823 European Council on Refugees and Exiles. (2021, September 17). Lithuania: Moves to Legalise Indefinite Detention, Fairness of Asylum System Called into Question, Politicians and NGOs React to Events at Belarus Border. <https://ecre.org/lithuania-moves-to-legalise-indefinite-detention-fairness-of-asylum-system-called-into-question-politicians-and-ngos-react-to-events-at-the-belarus-border/>; Global Detention Project, & Human Rights Monitoring Institute. (2021, November 16). Lithuania: Oral Submission to the UN Committee Against Torture, 72nd Session November-December 2021: Issues Related to Migrants, Refugees,

People Seeking Asylum, and Immigration Detention. <https://www.globaldetentionproject.org/testimony-on-lithuanias-treatment-of-migrants-at-the-border-with-belarus-at-the-un-committee-against-tortures-72nd-session>

824 European Council on Refugees and Exiles. (September 2021). Extraordinary responses: Legislative changes in Lithuania, 2021. Legal Note 11. <https://ecre.org/wp-content/uploads/2021/09/Legal-Note-11.pdf>; Platform for International Cooperation on Undocumented Migrants. (2021, September 28). Lithuania: pushbacks, arbitrary detention and restrictions to asylum. <https://picum.org/lithuania-borders-migrants-2021/>; Global Detention Project, & Human Rights Monitoring Institute. (2021, October 18). Lithuania: Submission to the UN Committee Against Torture 72nd Session, November-December 2021: Issues Related to Migrants, Refugees, People Seeking Asylum, and Immigration Detention.

<https://www.globaldetentionproject.org/joint-submission-to-the-committee-against-torture-lithuania>

825 Council of Europe, Commissioner for Human Rights. (2021, August 10). Letter to the Prime Minister of Lithuania. CommHR/DM/sf 030-2021. <https://rm.coe.int/letter-to-ms-ingrida-simonyte-prime-minister-of-lithuania-by-dunja-mij/1680a37aae>

826 United Nations, Committee against Torture. (2021, December 21). Concluding observations on the 4th periodic report of Lithuania. CAT/C/LTU/CO/4. <https://digitallibrary.un.org/record/3954251?ln=en>

827 Helsinki Foundation for Human Rights | Helsi?ska Fundacja Praw Cz?owieka. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/helsinki_foundation_for_human_rights.docx

828 Punishment. (2021, March 10). Council of Europe's anti-torture Committee calls on Malta to improve the treatment of detained migrants. <https://www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-malta-to-improve-the-treatment-of-detained-migrants>. See also: European Union Agency for Asylum. (2021). EASO Asylum Report 2021: Annual Report on the Situation of Asylum in the European Union. <https://euaa.europa.eu/easo-asylum-report-2021>

829 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2021, March 10). Response of the Maltese Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Malta from 17 to 22 September 2020. CPT/Inf (2021) 2. <https://rm.coe.int/1680a1b878>

830 National Ombudsman | Defensor Del Pueblo. (2021, March 3). El Defensor reclama que se agilicen los traslados de personas migrantes a la península [The Ombudsman calls for the transfer of migrants to the peninsula to be speeded up]. [https://www.defensordelpueblo.es/noticias/migracion-en-canarias/#:~:text=El%20Defensor%20del%20Pueblo%20\(e.f.,a%20las%20costas%20del%20archipi%C3%A9lago](https://www.defensordelpueblo.es/noticias/migracion-en-canarias/#:~:text=El%20Defensor%20del%20Pueblo%20(e.f.,a%20las%20costas%20del%20archipi%C3%A9lago)

831 Convive - Fundación Cepaim. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/convive_fundacion_cepaim.pdf

832 National Ombudsman | Defensor Del Pueblo. (2021, January 29). Libertad de circulación y residencia de los solicitantes de protección internacional [Freedom of movement and residence of applicants for international protection]. <https://www.defensordelpueblo.es/resoluciones/libertad-de-circulacion-y-residencia-de-los-solicitantes-de-proteccion-internacional/>

833 Border Violence Monitoring Network. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/border_violence_monitoring_network_bvmn.pdf

834 Hungarian Helsinki Committee | Magyar Helsinki Bizottság. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/hungarian_helsinki_committee.docx

835 United Nations, Committee against Torture. (2021, December 20). Concluding observations on the eighth periodic report of Sweden. CAT/C/SWE/CO/8. <https://digitallibrary.un.org/record/3954250?ln=en>

836 AIDA Portugal. (2021). Country Report: Portugal - 2020 Update. Edited by ECRE. Written by Portuguese Refugee Council (CPR). https://asylumineurope.org/wp-content/uploads/2021/05/AIDAPT_2020update.pdf

837 Organization for Aid to Refugees | Organizace pro Promoc Uprchlík?m. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/organization_for_aid_to_refugees.pdf

838 Parliamentary Ombudsman | Eduskunnan oikeusasiat. (2021, March 8). Ulkomaalaisten säälyönotto koronaepidemian aikana [Detention of foreigners during the COVID-19 outbreak]. EOAK/2615/2020. <https://www.oikeusasiat.fi/r/fi/ratkaisut/-/eoar/2615/2020>