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Recourse to detention was one of the primary concerns raised by NGOs. In a number of countries, concerns were expressed over the practice of detaining applicants at the border[708] or in general *de facto* detention while newly-arriving third-country nationals were waiting to lodge an application.[709] Doctors Without Borders highlighted in May 2022 the prolonged detention of more than 2,500 asylum seekers and migrants in inhuman conditions in Lithuania, 9 months after they crossed the border from Belarus.[710] The organisation called on the government to end the prolonged detention as soon as possible and to ensure an equal asylum system that respects the dignity of people seeking security.[711]

Amnesty International also pointed to the arbitrary detention of thousands of people in militarised centres in Lithuania and stated that they were held in inhuman conditions, tortured and ill-treated.[712] In reply, the Minster of the Interior noted that they cooperated openly in providing information for the report yet it reflects the views and testimonies of only one side.[713]

In Greece, four NGOs issued a joint statement on the prolongation of *de facto* detention in CCACs following a court decision that the exit ban for an applicant, who had been detained for 1.5 months, be immediately revoked.[714] Several concerns were also raised about detaining applicants from a safe third country, despite the lack of prospects for readmissions to Türkiye.[715]

In Malta, aditus continued to share concern over the prolonged and illegal detention of migrants,[716] while court actions were initiated for the immediate release of detainees.[717],[718] In view of the national elections, the organisation put forward a number of proposals in 2022 with regard to rescues at sea and disembarkation, administrative detention, reception, family reunification, the regularisation of undocumented migrants, the statelessness determination procedure and the decriminalisation of illegal entry for refugees and asylum seekers.[719]

In Italy, NGOs called to discontinue the illegal use of quarantine vessels for migrants since emergency measures were suspended on 30 April 2022 for all individuals arriving legally and a legal basis no longer existed for the *de facto* detention.[720] The use of quarantine vessels was provisionally extended by the authorities until the end of May 2022, with two boats being used for migrants arriving by sea or crossing the borders illegally.

The Organisation for Aid to Refugees voiced concern about immigration detention being used as a routine tool of migration control in Czechia.

Similar issues were noted by independent monitoring bodies. The CPT published a report following its visit to Switzerland in 2021.[721],[722] It found that foreigners were placed in a detention centre for several days before being relocated to administrative places for foreigners. The CPT recommended to the Swiss authorities to speed up the procedure to ensure an earlier transfer to administrative detention centres and enhance relevant conditions.

The placement of detained third-country nationals in isolation was also noticed by CPT in the case of Sweden. The organisation recommended a review of the legal framework and the practice of placing detained foreign nationals in isolation, in addition to terminating the practice of placing persons detained under aliens' legislation in prisons.[723]

The Council of Europe's Commissioner for Human Rights published report on its visit to Malta, calling on the authorities to prevent the detention of vulnerable asylum seekers and migrants and any arbitrary detention, to invest in alternatives to detention, immediately end the detention of migrant children, protect migrants from ill treatment and abuse, and provide independent monitoring bodies and NGOs unhindered access to detention places.[724]

National independent bodies contribute significantly to the monitoring of detention conditions in the field of international protection. For example, during a visit to the detention centre in August 2022, the Bulgarian Ombudsperson noted the detention of unaccompanied minors who were under investigation arrest in Ruse for a long duration in very poor conditions.[725] In Italy, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty expressed concern over what was considered *de facto* detention in transit zones, noting the persisting practice at air or port borders where the effective rejection of the foreign citizen at a border crossing does not take place immediately and people are blocked for days in the transit area. The National Guarantor was concerned over the lack of a judicial review of detention and the conditions of detention.[726]

In Estonia, the Chancellor of Justice (Ombudsperson) issued a position on the detention of a foreigner who had been refused entry, noting that the current conditions of Tallinn Airport may not be suitable for detention for more than 24 hours or overnight.[727] The Ombudsperson asked the PBGB to consider whether the current practice could be made more flexible and to align the agency's activities with the standards and principles of international organisations dealing with the detention of foreigners.

In Lithuania, the Seimas Controller concluded in a report that the conditions in the Medininkai FRC residential container camp amounted to *de facto* detention and inhuman and degrading treatment due to the nature and degree of restrictions applied to all foreigners for a long duration without the right to freely leave the territory.[728] The National Guarantor for the Rights of Persons Detained or Deprived of Liberty noted in its annual report to the parliament that Italy continued to adopt practices of closing borders, criminalisation and detention of migrants.[729],[730]

The lawfulness or excessive use of detention is often under a judicial review. In a number of cases, the ECtHR questioned the unlawfulness of detention, for example in *Dshijri v Hungary, R.M.* and *Others v Poland* in the course of a Dublin procedure, *Nikoghosyan and Others v Poland* for the administrative detention of asylum seekers at the Polish border, *M.B.K and Others v Hungary* for the confinement of Afghan applicants in the Röszke transit zone, and *Komissarov v Czech Republic* due to serious delays in processing an asylum application and delays in the extradition procedure leading to unlawful detention.

At the national level, courts ordered the review of detention decisions in Germany, Lithuania, Malta, Poland, Slovenia (here and here), Switzerland, the immediate release of detainees in Malta and granted compensation to detainees in Poland.

The courts also play an important role in interpreting relevant rules. For instance, the Court of Cassation in Belgium ruled in one case that appeals and appeals in cassation concerning the legality of detention could not be considered devoid of purpose in the case of a release or withdrawal of the detention order, in conformity with previous ECHR case law. In Estonia, the Supreme Court clarified how the time limits for detention outlined in the Dublin III Regulation should be interpreted in conjunction with national law. The Migration Court of Appeal in Sweden ruled that, if an applicant returns to the country after a removal and a new detention order is issued, it cannot be considered as a review of a previous detention order.

On the prolongation of detention, the Lithuanian Supreme Administrative Court concluded that an applicant's right to free movement cannot be restricted after a period of 6 months solely based on the fact that they entered the territory illegally and do not have a confirmed legal status. At the same time, applicants for international protection should be held in detention for the shortest time possible.

These rulings reaffirm the role of the courts as the supreme guarantor of the rights of asylum seekers at the national and European levels.

- 708AIDA Belgium. (2023). Country Report: Belgium - 2022 Update. Edited by ECRE. Written by the Vluchtelingenwerk Vlaanderen. https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-BE_2022update_final.pdf; AIDA Bulgaria. (2023). Country Report: Bulgaria - 2022 Update. Edited by ECRE. Written by the Bulgarian Helsinki Committee. https://asylumineurope.org/wp-content/uploads/2023/03/AIDA-BG_2022update.pdf
- 709AIDA Greece. (2023). Country Report: Greece - 2022 Update. Edited by ECRE. Written by the Greek Council for Refugees. https://asylumineurope.org/wp-content/uploads/2023/06/AIDA-GR_2022-Update.pdf; AIDA Slovenia. (2023). Country Report: Slovenia - 2022 Update. Edited by ECRE. Written by PIC. https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-SI_2022-Update.pdf
- 710Doctors without Borders | Médecins Sans Frontières. (2022, May 6). Detention of more than 2,500 people in Lithuania must end now. https://www.doctorswithoutborders.org/latest/detention-more-2500-people-lithuania-must-end-now
- 711Doctors without Borders | Médecins Sans Frontières. (2022, August 30). Discriminatory and cruel migration practices compound suffering in Lithuania.

https://www.msf.org/discriminatory-and-cruel-migration-practices-compound-suffering-lithuania

- 712Amnesty International. (2022, June 27). Lithuania: Forced out or locked up - Refugees and migrants abused and abandoned. EUR 53/5735/2022. https://www.amnesty.org/en/documents/eur53/5735/2022/en/
- 713Ministry of the Interior | Lietuvos Respublikos vidaus reikalų ministerija. (2022, June 27). Ministrė A. Bilotaitė: žmogaus teisių apsauga buvo ir yra Lietuvos prioritetas [Minister A. Bilotaitė: protection of human rights was and is Lithuania's priority]. https://vrm.lrv.lt/lt/naujienos/ministre-a-bilotaite-zmogaus-teisiu-apsauga-buvo-ir-yra-lietuvos-prioritetas
- 714Greek Council for Refugees | Ελληνικό Συμβούλιο για τους Πρόσφυγες. (2022, February 10). Κλειστή Δομή Σάμου: ο εγκλωβισμός συνεχίζεται [Samos Closed Structure: confinement continues]. https://www.gcr.gr/el/news/press-releases-announcements/item/1893-kleisti-domi-samou-o-egklovismos-synexizetai
- 715Refugee Support Aegean, & Stiftung PRO ASYL. (February 2022). Greece arbitrarily deems Turkey a “safe third country” in flagrant violation of rights. Legal note. https://rsaegean.org/wp-content/uploads/2022/02/RSA_STC_LegalNote_EN.pdf
- 716aditus foundation. (2023). Malta's institutional neglect of migrants. https://aditus.org.mt/publications/institutional-neglect/#.ZFIrKXZByUm
- 717aditus foundation. (2022). #ThereAreAlternatives. https://aditus.org.mt/our-work/advocacy-initiatives/therearealternatives/#.ZFIrNnZByUm
- 718See also: aditus foundation. (2022, July 26). Immigration Police Arrest 2 Minors Hosted in Shelter for Children. https://aditus.org.mt/immigration-police-arrest-2-minors-hosted-in-shelter-for-children/#.ZHXo5HZByUl aditus foundation. (2022, April 10). Malta still detains children with adults in Safi Detention Centre. https://aditus.org.mt/malta-still-detains-children-with-adults-in-safi-detention-centre/#.YlPoH-hByUk
- 719aditus foundation. (2022, 23 February). Elections 2022: Creating a More Just Society. https://aditus.org.mt/elections-2022-creating-a-more-just-society/#.ZFIrg3ZByUl
- 720Melting Pot Europa. (2022, May 20). CPR e navi quarantena. A quando la chiusura definitiva? [CPR and quarantine vessels. When is the final closure?]. https://www.meltingpot.org/2022/05/cpr-e-navi-quarantena-a-quando-la-chiusura-definitiva/
- 721Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2022, June 8). The Council of Europe's anti-torture Committee publishes a report on Switzerland. https://www.coe.int/en/web/cpt/-/the-council-of-europe-s-anti-torture-committee-publishes-a-report-on-switzerland
- 722Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2022, June 8). Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 22 mars au 1er avril 2021 [Report to the Swiss Federal Council on the visit to Switzerland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 March to 1 April 2021]. https://rm.coe.int/1680a6d051; Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2022, June 8). Réponse

du Conseil fédéral suisse au rapport du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) relatif à la visite effectuée en Suisse du 22 mars au 1er avril 2021 [Response of the Swiss Federal Council on the visit to Switzerland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 March to 1 April 2021]. CPT/Inf (2022) 10. https://rm.coe.int/1680a6d008

- 723Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2021, September 9). Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 29 January 2021. CPT/Inf (2021) 20. https://rm.coe.int/1680a3c256; Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2022, February 25). Response of the Swedish 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 Sweden from 18 to 29 January 2021. CPT/Inf (2022) 01. https://rm.coe.int/1680a5a35d
- 724Council of Europe, Commissioner for Human Rights. (2022, February 15). Report following her visit to Malta from 11 to 16 October 2021. CommDH(2022)1. https://rm.coe.int/report-of-the-council-of-europe-commissioner-for-human-rights-dunja-mi/1680a5498d; Government of Malta, Ministry for Foreign and European Affairs, Directorate General Global Issues, International Development and Economical Affairs. (2022). Comments of the Maltese Government on the Report of the Commissioner for Human Rights of the Council of Europe, Ms Dunja Mijatović, following her visit to the Republic of Malta 11-16 October 2021. https://rm.coe.int/comments-by-the-maltese-government/1680a583cb
- 725Ombudsperson | Омбудсман на Република България. (2022, August 19). При проверка на омбудсмана в Русе: Тежки нарушения при ареста на непридружени деца - чужденци [During the inspection of the ombudsperson in Ruse: Serious violations in the arrest of unaccompanied foreign children]. https://www.ombudsman.bg/bg/n/pri-proverka-na-ombudsmana-v-ruse-tezhki-nar-1878
- 726AIDA Italy. (2023). Country Report: Italy - 2022 Update. Edited by ECRE. Written by Associazione per gli Studi Giuridici sull'Immigrazione (ASGI). https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-IT_2022-Update.pdf
- 727Chancellor of Justice (Ombudsman) | Õiguskantsler. (21 Janaury 2022). Riiki sisenemise keelu saanud välismaalase kinnipidamine [Detention of a foreigner who has been refused entry]. 7-7/212357/2200435. https://www.oiguskantsler.ee/sites/default/files/field_document2/Riiki%20sisenemise%20keelu%20
- 728Office of the Seimas Ombudsmen | Lietuvos Seimo Kontrolieriai. (2022, July 8). Seimo kontrolierė – ilgalaikis de facto sulaikymas Medininkų gyvenamųjų konteinerių stovykloje prilygsta orumą žeminančiam elgesiui [Seimas controller - long-term de facto detention in the Medininkai container camp is equivalent to degrading behaviour]. https://www.lrski.lt/naujienos/seimo-kontroliere-ilgalaikis-de-facto-sulaikymas-medininku-gyvenamuju-konteineriu-stovykloje-prilygsta-oruma-zeminanciam-elgesiui/
- 729National ombudsman for the rights of persons deprived of personal liberty | Garante Nazionale dei diritti delle persone private della libertà personale. (June 2022). Relazione al

Parlamento 2022 [Report to the Parliament 2022]. https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/c8c57989b3cd40a71
- 730Italian Coalition for Civil Liberties and Rights | Coalizione Italiana Libertà e i Diritti civili. (2022, June 23). Diritti negati e detenzione: la tragica realtà dei migranti arrivati in Italia nella relazione del Garante al Parlamento [Denied rights and detention: the tragic reality of migrants arriving in Italy in the report of the Ombudsman to the Parliament] [Open Migration]. https://openmigration.org/analisi/diritti-negati-e-detenzione-la-tragica-realta-dei-migranti-arrivati-in-italia-nella-relazione-del-garante-al-parlamento/

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