

## 4.8.5. 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



Detention may have implications on the asylum procedure in terms of access to procedure, information provision, the personal interview and applicable timeframes. In 2021, EU+ countries made efforts to counterbalance shortcomings and address existing gaps.

The Finnish Immigration Service started conducting personal interviews through videoconferencing more often in detention units.<sup>[857](#)</sup> Cyprus developed the Guide of Prisoner's First Contact to inform newly-arrived detainees about their rights, obligations and the applicable rules.<sup>[858](#)</sup>

In a [case](#) involving the Netherlands, the ECtHR concluded that the ECHR, Article 5(4) had not been violated when, during the first weeks of the COVID-19 pandemic, the applicant was represented by and heard through his lawyer, who had attended the hearing on a detention order by telephone and with whom he had had regular contact. The general interest of public health and the application's fundamental rights had been respected, even if the applicant could not attend in person or through videoconference.

Following the Supreme Court of Cassation's [ruling](#) on administrative shortcomings in Italy, if the territorial commission failed to summon the applicant within the timeframe for an accelerated procedure, detention measures should be revoked since the detention period cannot exceed the time needed to examine the application. Nonetheless, practical barriers in accessing the asylum procedure were noted in Italy for detainees in a pre-removal detention centre (CPR).<sup>[859](#)</sup>

Conversely, delays in the asylum procedure may affect and prolong detention. The ECtHR recently [underlined](#) that the strict time limits to examine an asylum application constitute an important safeguard against arbitrariness. If national authorities do not react to an applicant's complaints about serious delays in the proceedings, this may result in a violation of the right to liberty and security, as was seen in a case against Czechia. The court also [found](#) a violation of the ECHR, Articles 5(1) and 5(4) in Hungary for the extended stay of applicants in the transit zone, considerable delays in examining the asylum claims, conditions of the stay and the lack of a judicial review.

The impact of subsequent applications on detention was addressed by the Cypriot Administrative Court (see for example [here](#) and [here](#)), concluding that a person acquires the status of an asylum seeker from the moment of registering a subsequent application until the final decision of the Asylum Service, thus contested detention and expulsion orders should be annulled.

Likewise, the Supreme Court in Estonia ruled that if the legal status of a detainee changes, a new application for detention is needed (see [here](#) and [here](#)). The status of detainee as an applicant of international protection is also critical for free legal aid, as [underlined](#) by the Supreme Court in Cyprus.

[857](#) Finnish Immigration Service | Maahanmuuttovirasto. (2021, March 23). Finnish Immigration Service interviews asylum seekers more often over a video connection. <https://migri.fi/en/-/finnish-immigration-service-interviews-asylum-seekers-more-often-over-a-video-connection>

[858](#) Commissioner for Administration and Human Rights | ?????????? ?????????? ??? ?????????? ?????????? ??????????. (2021). Guide of prisoners first contact. [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/5066D60C8859BBBDC2258704002F95EC/\\$file/C](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/5066D60C8859BBBDC2258704002F95EC/$file/C)  
See also: Commissioner for Administration and Human Rights | ?????????? ?????????? ??? ?????????? ?????????? ??????????. (2021, November 5). Actions of National Mechanism for the Prevention of Torture & Forced Returns Monitoring Mechanism and Guide of Prisoner's First Contact. <http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/9B94E216D46DD33FC225878F003EACB1?Open>

[859](#) AIDA Italy. (2021). Country Report: Italy - 2020 Update. Edited by ECRE. Written by the Association for Legal Studies on Immigration (ASGI). [https://asylumineurope.org/wpcontent/uploads/2021/06/AIDA-IT\\_2020update.pdf](https://asylumineurope.org/wpcontent/uploads/2021/06/AIDA-IT_2020update.pdf)