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# Section 3.7. Aspects of detention involving asylum applicants and former applicants

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icon presenting aspects of detention involving asylum applicants and former applicants

Detention is defined in the recast RCD, Article 2(h) as the confinement of an applicant for international protection by a Member State within a particular place where the applicant is deprived of the freedom of movement. An exhaustive list of legal grounds under which applicants can be detained during the asylum procedure, detailed procedural safeguards (for example on the length of detention and judicial review) and conditions of detention are defined in:

- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection;
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection;
- Dublin III Regulation; and
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally-staying third-country nationals following a negative final decision on international protection (although applicants are not within the scope of this directive, persons wishing to apply while in the return procedure and former applicants may fall into its scope).

In practice, detention may occur at different stages of the asylum procedure:

- At the start of the asylum procedure when an individual lodges an application for international protection, for example in order to determine or verify the applicant’s identity or nationality;
- Pending the examination of a claim for international protection based on grounds set out in the EU asylum acquis, for instance to decide on the applicant’s right to enter the territory, determine the elements of the asylum application which could not be obtained without detention, in particular if there is a risk of the applicant absconding, or organise a transfer to another Member State under the Dublin procedure; or

- Upon completion of the asylum procedure when a person, who had previously applied for international protection and the request was rejected, is detained pending a return to the country of origin.

The ECHR and international human rights conventions supplement the CEAS framework by setting additional constraints and safeguards during detention, mainly to protect against inhuman or degrading treatment and the freedom of movement.

Detention practices and conditions in detention continued to be closely scrutinised by international, European and national monitoring and judicial institutions. Public discussions intensified about detention at the border of people who arrive in an irregular manner and their possibility to access the asylum procedure (*see Section 3.1*) or obtain counselling and legal advice (*see Section 3.9*). The conditions in detention at the border were often described as alarming by international and civil society organisations. Conditions and practices relating to earlier arrivals were condemned by the ECtHR, shaping and informing current policy decisions.

EU+ countries typically extended the grounds for detaining foreigners, including applicants for international protection, and increased the possible length of immigration detention. Legislative changes included the possibility to detain an applicant awaiting a transfer to another EU+ country under the Dublin III Regulation and who is at risk of absconding. The detention of applicants with special needs, especially children, gave rise to several court judgments, for example from the ECtHR (*see Section 4*).

Following a final negative decision on the asylum application, the detention of foreigners pending a return, the principle of non-*refoulement* and the actual possibility to implement return decisions was at the centre of attention, with a large wealth of jurisprudential developments in this area.

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### 3.7.1. Recourse to detention

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