

## 3.7.2. Detention capacity and impact on detention conditions

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The Maltese Detention Service was transformed into an Agency.<sup>655</sup> The refurbishment programme of all detention facilities has been ongoing since 2021.<sup>656</sup> In 2023, works continued in the Hal Far centre and renovations finished in the Safi detention centre. A new clinic was launched to house the Migrant Health Service, independent from the Detention Service Agency (DSA), providing primary care services to detainees. The DSA also refurbished an area at the Hal Far Initial Reception Centre where a medical clinic was set up for the Migrant Health Service to conduct the initial assessment of all boat arrivals and to serve as a clinic for residents of the centre. Nurses are on-site full-time and detainees' health information is recorded electronically, which facilitates the transfer of information between different services. To improve overall conditions, the training of detention staff continued in 2023, focusing on emergency first aid, cultural sensitivity and security. In addition, the Welfare Officer continued various activities, for example, by organising weekly football practice based on a cooperation agreement with the Malta Football Association.

Despite improvements, the ECtHR [ordered](#) interim measures and [found](#) violations of several ECHR articles for self-claimed minors in Malta due to their illegal detention and the conditions in detention (see Section 4.6). The First Hall Civil Court [granted](#) access to a journalist to the prison and administrative immigration detention centres to investigate allegations about the conditions. The court noted that denying entry to this particular person was dictated by personal arbitrariness. Following this court judgment, the Maltese authorities confirmed that, while the court decision to grant access to a journalist to the immigration detention centres is in the appeal phase, all requests for visits by individuals inside the detention centre are considered by the DSA administration on a case-by-case basis.

The CPT report on its visit to Lithuania in December 2021 acknowledged the Lithuanian authority's efforts to quickly increase capacity but assessed that "several months after their arrival, foreign nationals were yet to be provided with dignified living conditions".<sup>657</sup> The Lithuanian government replied in a detailed document and noted that the reform of the reception, accommodation and detention systems was underway (see [Section 3.6](#)).

The CPT published the report of its visit to Latvia in May 2022 and noted that the material detention conditions in both centres were of a good standard in general. While the delegation did not receive any allegations of ill treatment by the centres' staff, detainees related several accounts of ill treatment by the special police forces patrolling the border area, relating to incidents from August 2021 to March 2022.<sup>658</sup>

The CPT also published in 2023 the findings of its visit to the Netherlands that took place in 2022 and found overall good conditions in facilities used for immigration detention but noted very poor conditions in the facilities in Aruba and Curaçao. The council underlined the need to speed up the planned legislative reform, which would provide specific rules for immigration detention to reflect its administrative character.<sup>659</sup> The government replied that the draft was before the Senate but needed new amendments to be passed by the House of Representatives. The bill was not foreseen to be enacted before the end of 2024.<sup>660</sup>

UNCAT expressed concerns about the conditions in temporary holding centres for immigrants and detention centres for foreign nationals in Spain, and invited the authorities to investigate possible abuse and acts of violence in these facilities.<sup>661</sup> For Slovakia, UNCAT reiterated that families with children should only be detained as a measure of last resort, for the shortest period of time, including for the implementation of a Dublin procedure.<sup>662</sup> UNCAT suggested the revision of Romanian legislation to ensure that children and other vulnerable persons are identified and thus not detained.<sup>663</sup>

Cyprus planned to expand the capacity of the pre-departure detention centre in Limnes, as part of its overall plans to manage migration. The CPT visited Cyprus in May 2023,<sup>664</sup> but the publication of the report on the visit was still pending.

The ECtHR delivered a series of judgments condemning the conditions in the Lampedusa hotspot in Italy for applicants who arrived between 2017 and 2019, and noted in all cases that a clear and accessible legal basis was missing for their detention in the hotspot.<sup>665</sup>

For Greece, the Committee of Ministers of the Council of Europe concluded that information available suggested that the conditions in detention were suitable and overcrowding was not reported. However, the committee felt that a clear and coherent description of the precise conditions in these pre-removal detention centres was missing. The committee also lacked information about the average length of detention. Based on civil society sources, the committee was informed that a high number of migrants were detained in police stations and medical and interpretation services were insufficient in some pre-removal detention centres.<sup>666</sup>

The ECtHR [concluded](#) that Croatian authorities did not protect a detainee's life from a foreseeable danger and did not properly investigate the incident when fire broke out in 2015 at a police station where migrants (having arrived in an irregular manner) were detained. The court found several shortcomings in the monitoring of detainees and concluded that the organisation and the state of the facilities were inadequate and the staff were not prepared. Croatian authorities noted that the action plan for the execution of the judgment was being developed.

On instructions from the government, the Swedish Migration Agency presented plans to increase detention capacity by approximately 100 places in total, in the regions of West and North Sweden.<sup>667</sup> The Swedish Ombudsperson conducted an unannounced inspection at the Mälndal detention centre in January 2023 and identified a number of shortcomings in the qualification and training of the personnel and the lack of detailed standard operating procedures and working methods.<sup>668</sup> The authorities replied that the visit happened shortly after the opening of the centre and many of the gaps observed were remedied since then, including special training for employees and the establishment of workflows.

The Prison and Probation Service in Denmark has been improving its procedures and the conditions in Ellebæk Detention Centre since 2020. Admission procedures were updated to allow for a timely, systematic and standardised identification of psychiatric conditions and suicide risk, with a swift referral for further treatment. The facility was also modernised. Civilian staff was employed to increase the number of recreational and educational activities and cooperation with NGOs was strengthened as well.

The Polish Ministry of Foreign Affairs submitted a letter to the Council of Europe, following a communication by the Helsinki Foundation for Human Rights on the execution of *Bistieva and Others (Russia) v Poland*. The letter details the initiatives which were undertaken to improve conditions in detention, especially for minors. The ministry acknowledged that time spent in detention increased, following a rise in migration in 2021 and 2022.<sup>669</sup>

Throughout 2023, the ECtHR communicated cases against Poland, for example concerning the detention of a pregnant woman with two children,<sup>670</sup> a family with two children,<sup>671</sup> and a family with children at the Polish-Belarusian border.<sup>672</sup> The Border Guard submitted information to the court about the care of the children, who were provided with special medical and psychological support due to their vulnerabilities. The

authority also underlined that the average area per person is between 5-11 m<sup>2</sup> and rooms are equipped with beds, tables with chairs, wardrobes and a television. The Border Guard stated that the family had access to public rooms and other facilities. In September 2023, the detention centre in Lesznowola opened a new building dedicated to families with children, with a capacity of 200 places and the old centre was closed. A civil society organisation observed that the staff in the old centre were reported to be more experienced with families (see [Section 4](#)).<sup>673</sup>The Border Guard underlined that officers receive full training in specialised training centres, including working with vulnerable groups and children.

The Supreme Court in Estonia [declared](#) unconstitutional the full ban on access to mobile phones and the Internet in immigration detention centres. The court underlined that the specific security environment of prisons could not automatically be applied to detention centres.

[655](#) Detention Service Regulations, Subsidiary Legislation 217.19, Legal Notice 16 of 2016, as amended by Legal Notice 330 of 2020, January 15, 2016. <https://legislation.mt/eli/sl/217.19/eng>

[656](#) European Union Agency for Asylum. (2023). *Asylum Report 2023*.

[657](#) Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2023, February 23). *Report to the Lithuanian Government on the periodic visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 20 December 2021*.

[658](#) Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2023, July 17). *Executive Summary of the Report to the Latvian Government on the periodic visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 20 May 2022*. CPT/Inf (2023) 16 - Part.

[659](#) Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2023, June 23). *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022*. CPT/Inf (2023) 12.

[660](#) Government of the Netherlands. (2023, June 23). *Response of the Government of the Netherlands to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Kingdom of the Netherlands from 10 to 25 May 2022*. CPT/Inf (2023) 13. <https://rm.coe.int/1680abb4b8>

[661](#) United Nations Committee against Torture. (2024, March 25). *Concluding observations on the seventh periodic report of Spain*. CAT/C/ESP/CO/7.

[662](#) United Nations Committee against Torture. (2023, June 7). *Concluding observations on the fourth periodic report of Slovakia*. CAT/C/SVK/CO/4.

[663](#) United Nations Committee against Torture. (2023, August 23). *Concluding observations on the third periodic report of Romania*. CAT/C/ROU/CO/3.

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FROU%2FCO3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FROU%2FCO3)

[664](#) Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2023, May 19). *Council of Europe anti-torture Committee visits Cyprus*.

665 Council of Europe, European Court of Human Rights [ECtHR]. *A.B. v Italy*, No 13755/18, ECLI:CE:ECHR:2023:1019JUD001375518, 19 October 2023. <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3767>

Council of Europe, European Court of Human Rights [ECtHR]. *M.A. v Italy*, No 13110/18, ECLI:CE:ECHR:2023:1019JUD001311018, 19 October 2023.

666 Council of Europe, Committee of Ministers. (2023, September 19). *M.S.S. v. Greece, Status of Execution, 1475 DH meeting*.

667 Swedish Migration Agency (SMA) | Migrationsverket. (2023, December 13). *Redovisning av uppdrag i regleringsbreven för 2022 och 2023 om plan för utökad förvarskapacitet och ytterligare förvarsplatser [Report on the assignments in the appropriation directions for 2022 and 2023 on a plan for increased detention capacity and additional detention places]*. Diarienummer 1.1.1.2-2023-17747.

668 Parliamentary Ombudsman | Riksdagens Ombudsmän |. (2023, April 17). *JO uppmärksammar allvarliga brister i förvaret i Mälndal [Ombudsman draws attention to serious shortcomings in the detention center in Mälndal]* [Press release]. <https://www.jo.se/pressmeddelande/jo-uppmarksammar-allvarliga-brister-i-forvaret-i-molndal-2/>

Swedish Migration Agency (SMA) | Migrationsverket. (2024, March 25). *JO-kritik mot förvarsverksamheten i Mälndal [Ombudsman's criticism of detention operations in Mälndal]* [Press release].

669 Council of Europe, Committee of Ministers. (September 2023). *1475th meeting (DH) - Reply from the authorities (25/08/2023) following a communication from an NGO (16/06/2023) (Helsinki Foundation for Human Rights) (16/06/2023) in the case Bistieva and Others v. Poland (Application No. 75157/14)* [DH-DD(2023)1014].

670 Association for Legal Intervention I Stowarzyszenia Interwencji Prawnej. (2023, June 20). *Detencja ci?arnej cudzoziemki z ma?ymi dzie?mi: interwenujemy przed ETPC [Detention of pregnant foreign woman with young children: we intervene before the ECHR]*. <https://interwencjaprawna.pl/detencja-ciezarnej-cudzoziemki-z-malymi-dziecmi-interwenujemy-przed-etc/>

Association for Legal Intervention I Stowarzyszenia Interwencji Prawnej (Ed.). *Written comments by a third party: The Association for Legal Intervention for Application No 40002/22 V.M. and Others v. Poland*.

671 Association for Legal Intervention I Stowarzyszenia Interwencji Prawnej. (2023, October 20). *Kolejna interwencja przed ETPC dotyczy?ca detencji cudzoziemców(-mek) w Polsce [Another intervention before the ECHR concerning the detention of foreigners(-mothers) in Poland]*.

672 Association for Legal Intervention I Stowarzyszenia Interwencji Prawnej. (2023, September 1). *Kolejna sprawa przed ETPC za detencj? rodzin z dzie?mi [Another case before ECHR for detention of family with children]*. <https://interwencjaprawna.pl/kolejna-sprawa-przed-etc-za-detencje-rodziny-z-dziecmi/>

European Court of Human Rights. (2023, August 28). *Application No 22399/22 M.H.D. and Others against Poland lodged on 28 April 2022 communicated on 10 July 2023*.

673 Helsinki Foundation for Human Rights | Helsi?ska Fundacja Praw Cz?owieka. (2023, November 30). *Input to the Asylum Report 2024*.