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Following the CJEU's judgment, the Lithuanian Constitutional Court concluded that the automatic detention of migrants who crossed the border illegally was unconstitutional. In a related case, the Supreme Administrative Court adopted the same line of reasoning. Similar complaints were filed with the Seimas Controller634and the ECtHR as well.635

Amendments revising detention provisions came into force in Lithuania at the end of 2023, including a new alternative to detention which allows a person to leave the assigned accommodation only with the permission of the head of facility.636UNHCR noted with concern that the law retained the emergency provisions allowing to place applicants in closed reception facilities for up to 6 months.637The Lithuanian Red Cross Society expressed its concerns over the practice to put newly-arrived applicants into quarantine buildings, where the organisation was not allowed to visit residents and no legal safeguards were in place to prevent arbitrary detention. Testimonies stated that the quarantine period may sometimes last more than a week.

In addition, the organisation received information about migrants being readmitted to Latvia without leaving the quarantine zone and there were instances of people crossing the border illegally but not being registered with the SBGS and being detained without an individual decision and access to a judicial review.638The Council of Europe's Committee for the Prevention of Torture (CPT) published the report on its visit to Lithuania in December 2021 and expressed grave concerns about the systematic nature of restrictions imposed on all applicants, including families and vulnerable persons. The committee underlined that the measures could amount to detention but without the procedural safeguards which should be ensured.639

MOAS observed that migrants arriving to Malta by boat were also held for medical clearance for at least 2 weeks. The quarantine period could be ordered for 4 weeks, which could be extended to 10 weeks. The organisation noted that according to the government this did not amount to a deprivation of liberty and detention,640but was a measure limiting the freedom of movement of an applicant on grounds of public health safety, due to the prevalence of certain communicable diseases, like tuberculosis, amongst migrants arriving by boat.

In total, 22 Greek civil society organisations issued a joint statement denouncing the automatic detention of applicants on Samos and Lesvos, following a surge in arrivals in summer 2023.641 The situation gave rise to questions by MEPs,642who carried out an ad hoc visit and visited three CCACs for the first time in Lesvos, Kos and Samos.643The report on the visit was still to be published. In addition, on the mainland, the Administrative Court of Athens confirmed in several cases that the online request for an appointment to submit an application for international protection establishes a person's status as an applicant, and thus, their situation is regulated and they cannot be detained.644

In the Netherlands, a new internal guideline allowed authorities to perform screening 3 days after the registration interview in a border procedure, due to capacity issues, and maintain the detention of the applicant in the meantime. The district court in Amsterdam found that an applicant was unlawfully detained during these extra 2 days, as detention was only permitted for the shortest possible period, and the authority's capacity issues should not be at the applicant's risk and expense. This was overturned on further appeal, and the Council of State concluded that the authorities acted sufficiently quickly and underlined that the guidelines were further revised to ensure that the assessment was done the earliest possible.

The ECtHR concluded that three applicants in the case *A.E. and T.B v Italy* were arbitrarily detained upon their arrival in 2016, as they were not served a refusal-to-entry order, were not able to leave the hotspot and were transferred without any documentation. In *W.A. and Others v Italy*, concerning also Sudanese nationals who arrived in 2016, the court concluded that four out of five applicants did not sufficiently substantiate their complaints, while no violation of the ECHR, Article 3 was found for W.A. The court underlined that he was assisted by a lawyer and explicitly stated that he did not want to apply for international protection and merely wanted to transit through the country.

The ECtHR continued to rule on complaints related to applicants' detention in transit zones in Hungary that operated between 2015 and 2020. In all three cases delivered in 2023, the court found a violation of Articles 5(1) and (4) for illegal detention. In addition, it found a violation of Article 3 for an adult applicant who was not provided with food for 6 days, for the detention of the children of a family (but noted that the severity threshold was not reached for the parents), and for a child and her mother who was not provided with adequate medical care and was at risk of suicide.645In addition, the court found in several cases throughout 2023 that applicants having arrived in 2014, 2015 and 2018 were detained unlawfully, without a sufficiently individualised justification in the detention order.646

The Italian Court of Cassation clarified that it is insufficient to inform an applicant about the forms of international protection; the authorities must also inform bout the modalities and procedure to apply for protection. When reviewing the detention order, the Justice of Peace must investigate whether the applicant received sufficient information and was informed about the time limits. In the absence of proof, the Justice of Peace cannot validate the order.

Asylex underlined that detention in Dublin cases is ordered without a prior judicial review. Due to the short timeline between detention and the implementation of the transfer, it was noted that the files for the review of the detention order at times arrived at the court after the

applicants had already been transferred to another EU+ country.647

The ECtHR found violations of the ECHR, Articles 3, 5(1) and (4) when a Guinean mother and her 7.5-month old baby were detained pending their Dublin transfer. The Administrative Court in Košice annulled the detention decision for an unaccompanied minor who was not appointed a legal guardian, in line with Slovak legislation (*see Section 4.6*).

The ENS highlighted that stateless asylum applicants were at an increased risk of unlawful and arbitrary detention due to issues surrounding identification (*see Section 3.12*).648

Courts gave indications on the use of alternatives to detention in Poland. For example, the District Court in Olsztyn, Poland underlined that authorities cannot assume that alternatives to detention would be ineffective, basing themselves only on the fact that the person crossed the border in an irregular manner.649In another case, the Warsaw Regional Court ordered reporting obligations and residency at a specific address instead of immigration detention. It emphasised that detention must be a last measure.650In a judgment of March 2023, Case No VIII SAB/Wa 6/23, the Voivodship Administrative Court in Warsaw examined the case of an asylum seeker who had waited over 3 weeks to have his application accepted and registered. The court confirmed that the Border Guard managing detention centres is bound by the 3-day deadline to accept and register applications.651The Border Guard stated that the 3-day deadline does not apply to foreigners placed in detention centres, the law provides for a 3-day deadline in cases cited in Article 28(1) and (3) of the Law on Granting Protection to Foreigners on the Territory of the Republic of Poland. In addition, the authority noted that the legislator provided in Article 28(5) a 10-day deadline in the case of a mass influx of foreigners.

The Supreme Administrative Court in Lithuania found a reporting obligation to be appropriate for a person whose return was pending after five unsuccessful international protection applications. The court underlined that the person's reluctance to return did not justify detention, when overall he was not hiding, cooperated with the authorities, had a child, owned an apartment, and had connections to persons residing in the country.

The civil society organisation Center for Legal Aid – Voice in Bulgaria published a practical guide on the application of alternatives to immigration detention, including for applicants for international protection.652

At the beginning of 2024, the Belgian CALL referred questions to the CJEU for a preliminary ruling on the compatibility with EU law of Belgian rules on the detention of applicants during a border procedure.653

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