

## 5.3. Limitations on applicants' freedom of movement and detention

### 5.3. Limitations on applicants' freedom of movement and detention



Many court decisions in 2024 influenced when and how applicants and former applicants can be detained. In addition, provisions in the Pact on Migration and Asylum cover allocation to a geographical area, limitations on the freedom of movement and the use of alternatives to detention, which will guide EU+ countries in the upcoming years in implementing new practices.

Detention in the context of access to the procedure continued to be highly debated at the political level and in the context of the Pact, while the ECtHR and national courts looked into its legality in individual cases, for example detention in transit zones which were in place in Hungary between 2015-2020 ([see Section 2](#)). The Dutch Council of State clarified that people requesting to be registered for temporary protection at the border cannot be detained on the legislative basis used for the detention of applicants for international protection at the border. [272](#)

A series of cases deliberated on the legality of detention when national authorities considered that a person is a threat to national security. The ECtHR reiterated on several occasions the need for a close connection between detention and the aim to prevent unauthorised entry as an interest of national security. [273](#)

Allocation to a specific geographical area and limitations on the freedom of movement were considered by Dutch, Lithuanian and Swiss courts. The Dutch Council of State ruled that transferring an applicant to a specific reception facility for disruptive applicants did not amount

to detention, despite this measure being a significant restriction on the freedom of movement. [274](#) In contrast, a district court found that the process availability location (PBL), where restrictions on the freedom of movement were used for applicants with a low probability of being recognised, did not have a sufficient legal basis in national legislation. [275](#) In Lithuania, the court concluded that an accommodation which restricts movement (applicants cannot leave the facility) cannot be considered as an alternative to detention but *de facto* detention. [276](#) The Swiss Federal Administrative Court underlined the importance of the right to family unity when an applicant requested to change the canton to which he was allocated. [277](#) A legislative amendment eased the rules for requesting a change of canton based on proximity to employment. [278](#)

A central element to decide on the lawfulness of a detention order remained the prospect of a viable removal within a reasonable period. While Greek courts released applicants from detention by considering that there was no real prospect of a return to *Türkiye*, [279](#) the Dutch Council of State confirmed that the possibility to return to Algeria was restored and, when necessary, detention pending a return may be applied. [280](#)

The use of alternatives to detention received greater interest with the Pact reiterating the key principles and safeguards, while introducing new elements, such as the obligation of the authorities to state in written in the detention order the reason why a less coercive measure could be applied. [281](#) The EUAA received the mandate to develop [guidelines](#) on alternatives to detention under the Return Border Procedure Regulation, which were published in December 2024. [282](#) UNHCR called states to reform legislation and mobilise resources to end the detention of asylum seekers and refugees for immigration-related reasons and implement alternatives to detention. [283](#) Following its introduction in 2023, Italian legislation was amended to adjust the rules requiring certain applicants to pay a bail of EUR 2,500-5,000 as an alternative to detention pending the outcome of their asylum application. [284](#) As a consequence, the Italian Court of Cassation communicated to the CJEU that a preliminary ruling, requested earlier in 2024, [285](#) was no longer necessary and the case was removed from the register (see *Table 4*). [286](#)

Conditions in immigration detention remained a source of concern for international and civil society organisations. [287](#) Comprehensive reports were published for Cyprus, [288](#) Denmark, [289](#) Estonia, [290](#) Greece, [291](#) Italy, [292](#) Norway, [293](#) Poland [294](#) and Switzerland. [295](#)

- [272](#)

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants v The Minister for Asylum and Migration \(de Minister van Asiel en Migratie\)](#), BRS.24.000105, ECLI:NL:RVS:2024:4292, 30 October 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [273](#)

Council of Europe, European Court of Human Rights [ECtHR], [B.A. v Cyprus](#), No 24607/20, ECLI:CE:ECHR:2024:0702JUD002460720, 2 July 2024. Link redirects to the English summary in the EUAA Case Law Database; Council of Europe, European Court of Human

Rights [ECtHR], [\*K.A. v Cyprus\*](#), No 63076/19, 2 July 2024. Link redirects to the English summary in the EUAA Case Law Database; Estonia, Courts of Appeal (Circuit Courts) [Ringkonnaokohtud], [\*X v Police and Border Guard Board \(Politsei- ja Piirivalveamet, PBGB\)\*](#), 3-23-2004, 27 March 2024. Link redirects to the English summary in the EUAA Case Law Database; Council of Europe, European Court of Human Rights [ECtHR], [\*M.B. v The Netherlands\*](#), No 71008/16, ECLI:CE:ECHR:2024:0423JUD007100816, 23 April 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [274](#)

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [\*Applicant v The Minister for Asylum and Migration \(de Minister van Asiel en Migratie\)\*](#), 202300933/1/V1, ECLI:NL:RVS:2024:3564, 11 September 2024. Link redirects to the English summary in the EUAA Case Law Database. Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [\*Applicant v The Minister for Asylum and Migration \(de Minister van Asiel en Migratie\), Central Agency for the Reception of Asylum Seekers \(Centraal Orgaan opvang asielzoekers, COA\)\*](#), 202401533/1/V1, ECLI:NL:RVS:2024:3565, 11 September 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [275](#)

Netherlands, Court of The Hague [Rechtbank Den Haag], [\*Applicant v Central Agency for the Reception of Asylum Seekers \(Centraal Orgaan opvang asielzoekers, COA\)\*](#), AWB 24/7, ECLI:NL:RBDHA:2024:2653, 01 March 2024. Link redirects to the English summary in the EUAA Case Law Database. Ministry of Asylum and Migration | Ministerie van Asiel en Migratie. (2024, October 25). [\*Kamerbrief Voortgang aanpak overlastgevende asielzoekers\*](#) [Parliamentary brief on the progress on managing asylum seekers with disruptive behaviour].

- [276](#)

Lithuania, Supreme Administrative Court [Lietuvos vyriausiasis administracinis teismas], [No AB-4807-4-44-3-00011-2024-5](#), 20 March 2024.

- [277](#)

Switzerland, Federal Administrative Court [Bundesverwaltungsgericht - Tribunal administratif fédéral - FAC], [\*A, B v State Secretariat for Migration \(Staatssekretariat für Migration, SEM\)\*](#), F-55/2024, 19 July 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [278](#)

Federal Council | Der Bundesrat | Conseil fédéral | Consiglio federale. (2024, May 1). [\*Faciliter l'intégration sur le marché du travail des personnes admises à titre provisoire\*](#) [Facilitate the integration to the labour market of people admitted on a temporary basis].

- [279](#)

Greece, Administrative Court [Διοικητικό Πρωτοδικείο], [Applicant v Greek State \(represented by Minister for Citizen Protection\)](#), No Π2087/2024, 21 June 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [280](#)

Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], [Applicants v State Secretary for Justice and Security \(Staatssecretaris van Justitie en Veiligheid\)](#), 202306388/1/V3 and 202307965/1/V3, ECLI:NL:RVS:2024:1892, 6 May 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [281](#)

European Union Agency for Asylum. (2025, March 25). [Guidelines on Alternatives to Detention](#).

- [282](#)

European Union Agency for Asylum. (2025, March 25). [Guidelines on Alternatives to Detention](#).

- [283](#)

United Nations High Commissioner for Refugees. (September 2024). [Unlocking rights: Towards ending immigration detention for asylum-seekers and refugees](#).

- [284](#)

[Decreto 10 maggio 2024 indicazione dell'importo e delle modalita' di prestazione della garanzia finanziaria a carico dello straniero durante lo svolgimento della procedura per l'accertamento del diritto di accedere al territorio dello Stato e contestuale abrogazione del decreto 14 settembre 2023](#) [Decree of 10 May 2024 indication of the amount and methods of provision of the financial guarantee to be paid by the foreigner during the procedure for the verification of the right to access the territory of the State and simultaneous repeal of the decree of 14 September 2023], 10 May 2025.

- [285](#)

Ministry of Labor and Social Policies | Ministero del Lavoro e delle Politiche Sociali. (2024, February 9). [Asilo, garanzia finanziaria per non essere trattenuti. I dubbi della Cassazione](#) [Asylum, financial guarantee not to be detained. The doubts of the Supreme Court]. Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], [Ministry of the Interior \(Ministero dell'Interno\) v Applicants](#), No 3562, 30 January 2024. Link redirects to the English summary in the EUAA Case Law Database. Italy, Supreme Court of Cassation - Civil section [Corte Suprema di Cassazione], [Ministry of the Interior \(Ministero dell'Interno\) v Applicants](#), No 3563/2024, 30 January 2024. Link redirects to the English summary in the EUAA Case Law Database.

- [286](#)

Court of Justice of the European Union, [Order of the President of the Court of 13 November 2024 \(request for a preliminary ruling from the Corte suprema di cassazione - Italy\) - Questore della Provincia di Ragusa, Ministero dell'Interno v D. A. \(C-104/24\), M. A. \(C-105/24\) \(Joined Cases C-104/24 and C-105/24, \(1\) Questore della Provincia di Ragusa et Ministero dell'Interno\) \(C/2025/903\)](#) (17 February 2025).

- [287](#)

European Council on Refugees and Exiles. (2025). [Input to the Asylum Report 2025](#).

- [288](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2024, May 17). [Council of Europe anti-torture Committee \(CPT\) publishes report on its 2023 periodic visit to Cyprus](#)

- [289](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2024, December 12). [Council of Europe anti-torture Committee \(CPT\) publishes report on its 2024 periodic visit to Denmark](#).

- [290](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2024, September 26). [Council of Europe anti-torture Committee \(CPT\) publishes report on its 2023 periodic visit to Estonia](#).

- [291](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2024, June 12). [Council of Europe anti-torture Committee \(CPT\) again calls on Greece to reform its immigration detention system and stop pushbacks](#). Refugee Support Aegean. (2024, October 24). [Systemic deficiencies persist in immigration detention in Greece: RSA Submission to the Committee of Ministers of the Council of Europe](#).

- [292](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2024, December 13). [Anti-torture Committee publishes report on ad hoc visit to Italy](#). Melting Pot Europa. (2024, November 7). [Il fallimento del sistema CPR nel progetto "Trattenuti 2024"](#) [The Failure of the CPR System in the "Retained 2024" Project].

- [293](#)

Supervisory Board for Forced Returns and Immigration Detention | Tilsynsrådet for tvangretur og utlendingsinternatet. (2024). [Tilsynsrådet for tvangretur og](#)

[utlendingsinternatets årsmelding 2024 \(Internatgruppen\)](#) [Supervisory Board for Forced Returns and the Immigration Detention's Annual Report 2024 (Detention Center Group)].

- [294](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2024, February 22). [Council of Europe anti-torture Committee \(CPT\) publishes report on Poland](#).

- [295](#)

Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (2025, January 14). [Council of Europe anti-torture Committee \(CPT\) publishes report on 2024 visit to Switzerland](#).