5.3. Detention of applicants for international protection

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icon presenting detention during the asylum procedure

The detention of applicants remained contentious for authorities, courts and civil society organisations, with the 2013 and 2024 RCDs emphasising that such measures must be a last resort. Courts have highlighted the principle of proportionality, the need to consider less intrusive measures (such as residing in designated accommodation) and to safeguard an applicant's vulnerabilities.299

Several Member States, such as Czechia, Denmark, Ireland, Luxembourg and Portugal,300 were working on alternatives to detention through standard operating procedures and other administrative frameworks.

Switzerland is piloting a task force which focuses on repeat offenders among asylum seekers and other foreign nationals with the aim of ensuring the effective and proportionate use of coercive measures, including administrative detention. Information was shared on a centralised case management system among migration authorities and federal/cantonal law enforcement. 301

Detention for migratory purposes was monitored by national preventive mechanisms, civil society organisations302 and international bodies. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published several reports on fact-finding visits conducted in 2024. The CPT expressed great concern about detention conditions in Bulgaria and Malta.303 It issued statements about the situation in Denmark and Norway, where authorities were urged to expand non-custodial alternatives, improve conditions (including the handling of self-harming detainees) and move away from prison-like immigration detention.304

Some countries expanded or plan to expand detention capacity, for example Sweden, which also tightened legislation on security measures in custody,305 and Poland, which amended its asylum law and allowed the detention of asylum-seeking unaccompanied minors aged 15 or older.306 Polish courts deliberated on detention used in the framework of temporarily suspending access to the asylum procedure at the border in cases of instrumentalisation, noting

in several cases that there was no legal ground for detention.[307] Poland underlined that placing unaccompanied minors in secured facilities is an exceptional measure of last resort, subject to judicial oversight and an individual assessment. The ongoing legislative reforms (effective June 2026) specifically address the legal gaps noted by domestic courts in cases of instrumentalisation, aiming to ensure a robust framework that balances national security requirements with the fundamental rights of vulnerable applicants.

Cyprus planned to expand its detention capacity by constructing EU-funded facilities in Limnes, including an 800-place pre-departure centre for those awaiting a return. The first phase of this centre with a capacity of 160 places was completed and handed over to the Cyprus police and is expected to become operational in March 2026. The remaining sections are scheduled for delivery in April 2026. In Malta, the Prevention of Disease Ordinance, Article 13 was deleted and replaced by Legal Notice 183 of 2025,[308] which can be used by the public health authorities and the Immigration Police to order the detention of migrants who arrive on the territory in an irregular manner, including asylum seekers, pending a medical clearance.

Courts adjudicated numerous cases concerning the detention of applicants for international protection. Proportionality[309] remained a central criterion in assessing the lawfulness of detention, with special consideration paid to the risk of absconding[310] and the prospects of a removal.[311] In this context, the French Constitutional Council upheld the detention of asylum applicants only when detention constitutes a last resort and proportionate measure under judicial oversight and: i) the asylum applicant poses a real, current and serious threat to public order; or ii) for the purpose of determining the grounds on which the asylum application is made, when the application is not submitted to the competent authority and there is a proven risk of absconding.[312]

European courts also examined issues relating to the right to a fair procedure in detention,[313] including standards in age assessments,[314] the best interests of the child[315] and legal representation.[316] In a 2021 case concerning Croatia, the ECtHR found that the restrictions on the applicant's access to a lawyer and the absence of an effective remedy with an automatic suspensive effect breached Articles 3 and 13 of the European Convention on Human Rights (ECHR).[317] The ECtHR found violations of the same provisions in a case submitted in 2013 against Greece, where the applicant had been detained for more than 2.5 months in conditions unsuitable for prolonged confinement and was denied an effective remedy to challenge them.[318]

Detention conditions were also reviewed by national and EU courts.[319] When a higher than usual influx of asylum seekers arrived at Schiphol airport resulting in more restrictive detention conditions, the Dutch Council of State ruled that the premises still qualified as a specialised detention facility within the meaning of Article 10(1) of the 2013 RCD and found it to be lawful.[320] Later in the year, the CJEU was requested to rule on the concept of specialised facilities,[321] as well as on the extent to which judges may examine, of their own motion, compliance with the principle of *non-refoulement*.[322]

Lastly, some courts continued to refuse to validate the transfer of migrants (who are subject to a return decision and applied for asylum after the transfer) to the Italian CPR in Albania, stating grounds such as the right to remain on the territory after applying for asylum, vulnerabilities and

health concerns.323 In mid-2025, the Italian Constitutional Court held that the CPR framework did not meet the constitutional requirement that restrictions on personal liberty must be clearly defined and regulated by law. Meanwhile, the CJEU issued a preliminary ruling in cases involving asylum seekers held in administrative detention in Albania based on their provenance from countries deemed safe by Italian law, finding that countries where certain categories of people would not be protected cannot be designated as safe. The court noted that the APR, due to enter into application in June 2026, introduces this option, and the regulation to designate a third country as a safe country of origin, both at the EU and national levels, may provide for exceptions for clearly identifiable categories of people.324

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