Italian Constitutional Court calls for reform of asylum detention rules while declaring case inadmissible

The Constitutional Court has declared inadmissible a legal question concerning the detention of asylum seekers, while at the same time urging lawmakers to revise the current framework to ensure full compliance with constitutional and European Union standards.

In its judgment, the Court examined a question raised by the Court of Cassation regarding the legality of continued detention of a foreign national in a pre-removal detention centre (CPR) after submitting an application for international protection.

Under current legislation, individuals already detained for the purpose of expulsion may apply for asylum. In such cases, the police authority (questore) may order continued detention if there are reasonable grounds to believe the application is being used to delay or prevent removal. This measure must be validated by the competent court of appeal, in line with constitutional safeguards on personal liberty.

If the court does not validate the initial detention order, the authorities may issue a new detention measure within 48 hours, subject again to judicial review, in cases where there is a risk of absconding or concerns related to public security. During this period, the individual remains in detention.

The Court of Cassation questioned whether this provision was compatible with Article 13 of the Italian Constitution, which requires that any restriction on personal liberty not validated by a judge must be considered revoked and without effect.

The Constitutional Court, however, found the question inadmissible on procedural grounds, concluding that it was not directly relevant to the case under consideration. The underlying proceedings concerned only the validity of the most recent detention order, rather than the interim period between the non-validation of the earlier measure and the adoption of a new one.

Despite this, the Court took the opportunity to address the broader legal framework. It acknowledged the legitimacy of preventing misuse of the asylum

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system, particularly where applications may be submitted solely to delay expulsion. At the same time, it emphasised that such objectives must be pursued in full compliance with constitutional protections and EU law.

The Court highlighted that any restriction on personal liberty must adhere to strict procedural safeguards, as required under Article 13 of the Constitution, to prevent arbitrary decisions by public authorities. It therefore called on the legislature to review and amend the current rules to ensure they provide adequate guarantees against potential abuses.

Source(s)

- Ministry of Labour and Social Policies | Ministero del Lavoro e delle Politiche Sociali (30 March, 2026), Trattenimento dei richiedenti asilo, legittimo solo se conforme a Costituzione e diritto Ue [Detention of asylum seekers is lawful only if it complies with the Constitution and EU law], https://integrazionemigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/4678/Trattenimento-dei-richiedenti-asilo-legittimo-solo-se-conforme-a-Costituzione-e-diritto-Ue

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