Detention - Italy

Overview

Content updated and validated on: 10/09/2025

Relevant EU legislation

Italy is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through the Decreto Legge No. 142/2015 | Legislative Decree No. 142/2015 and Decreto Legge No. 13/2017 | Legislative Decree No. 13/2017.

National legislation

- Decreto Legge No. 142/2015 | Legislative Decree No. 142/2015
- Decreto Legge No. 13/2017 | Legislative Decree No. 13/2017

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	Police Immigration Office | Ufficio Immigrazione Questura	n/a
Administration and management of detention facilities	The Department of Civil Liberties and Immigration, Ministry of the Interior | Dipartimento per le libertà civili e l'immigrazione, ministero dell'interno	Detention facilities are managed by the implementing partner who is awarded contractor for the reception conditions provision within the detention facilities

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Area	National authority/ stakeholder	Assistance to competent authority
Information provision in detention	The Department of Civil Liberties and Immigration, Ministry of the Interior | Dipartimento per le libertà civili e l'immigrazione, ministero dell'interno	Information is provided by the implementing partner who is awarded contractor for the reception conditions provision within the detention facilities
Interpretation services in detention	The Department of Civil Liberties and Immigration, Ministry of the Interior | Dipartimento per le libertà civili e l'immigrazione, ministero dell'interno	Interpretation services are provided by the implementing partner who is awarded contractor for the reception conditions provision within the detention facilities
Access to the procedure and provision of asylum information in detention	Police Immigration Office | Ufficio Immigrazione Questura	n/a
Detention for the Dublin procedure	Police Immigration Office | Ufficio Immigrazione Questura	n/a
Processing of asylum applications of applicants who are in detention	Territorial Commissions for the Recognition of International Protection | Commissioni Territoriali per il riconoscimento della protezione internazionale	n/a

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Area	National authority/ stakeholder	Assistance to competent authority
Legal assistance and representation in detention	The Department of Civil Liberties and Immigration, Ministry of the Interior | Dipartimento per le libertà civili e l'immigrazione, ministero dell'interno	Legal assistance is provided by the implementing partner who is the awarded contractor for the reception conditions provision within the detention facilities provides for the legal orientation through dedicated staff.
Review of detention	Police Immigration Office | Ufficio Immigrazione Questura	n/a

Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

According to Article 6(3) of Legislative Decree No 142/2015, par. 3 bis as recently amended by Law Decree No 20/2023, as converted by Law No 50/2023 and Law 75/2025 converting Law Decree 37/2025, an applicant may be detained for strictly the necessary time, not exceeding 30 days, in specific facilities for the determination or verification of the applicant's identity or nationality, also through the use of photodactyloscopic detection operations and the verification of databases. If identity or citizenship cannot be determined, the applicant may be transferred to a detention centre (CPR), for a maximum of 90 days, which may be extended by an additional 30 days if the individual is from a country with which Italy has signed an agreement on repatriation.

Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

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As provided by Article 6 of Legislative Decree No 142/2015, par. 2 lett. d) asylum applicants may be detained due to a risk of absconding if they provide false information about their identity or do not possess a passport.

According to Article 6ter of Legislative Decree No 142/2015, amended by Decree Law No 20/2023 converted into Law No 50/2023, asylum seekers awaiting the outcome of a Dublin procedure can be detained if there is a substantial risk of absconding. The detention period cannot exceed the time necessary for the Dublin transfer. Initially, detention can last 6 weeks, but if there are serious difficulties in executing the transfer, a judge may extend it for an additional 30 days up to a maximum of 6 weeks. The *Questura* must promptly notify the judge about the transfer, even before the detention time expires.

The risk of absconding is considered substantial if the asylum seeker has previously evaded a Dublin procedure or meets at least two of the following criteria:

- Lack of a travel document;
- Absence of a reliable address;
- Failure to appear before the competent authority;
- Insufficient financial resources;
- Providing false declarations to avoid deportation.

Detention in the context of a procedure to decide on the applicant's right to enter the territory

Article 7bis of Law No 50/2023 which introduced the art. 6 bis of Legislative decree 142/2015 allows the detention of asylum seekers during the accelerated procedure for asylum applications submitted at the border, solely for the purpose of determining the right to enter the state's territory This accelerated procedure applies when the asylum request is made directly at the border or in transit zones, either by a foreign national caught evading or attempting to evade border controls (Article 28bis(2b) Legislative Decree No 25/2008) or by someone from a designated safe country of origin (Article 28bis, introduced by Article 7 of Law No 50/2023). The detention is exclusively for verifying the individual's right to enter the territory.

The provision also highlights the priority of detaining individuals who are considered to be a threat to public order or security or who have been convicted, even with a non-final judgment, for serious crimes, including facilitating illegal immigration. This also applies to citizens of third countries with which repatriation

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agreements or arrangements are in force (Article 14(1.1) Unified Immigration Act).

In these cases, the asylum seeker may be detained from the time of the application until a decision is made on any request to suspend the enforcement of the rejection of the asylum application (Article 35bis Legislative Decree No 25/2008). If an appeal is filed against the territorial commission's decision on international protection, the appeal generally suspends the enforcement of the decision, unless it is filed by someone already detained in hotspots or CPRs (reception centres) (Article 35bis(3) Legislative Decree No 25/2008). However, in such cases, the enforcement can still be suspended if there are serious and specific grounds. The judge must decide on the suspension request within 20 days, either confirming, modifying or revoking the challenged decision.

According to paragraph 2 of the new Article 6bis, an asylum seeker at the border may be detained if they fail to provide a valid passport or equivalent document, or if they do not offer adequate financial guarantees. The exact amount and method of providing these guarantees has been determined by the Decree of the Minister of the Interior May 10, 2024 (Publication in the Official Gazette of June 19, 2024) on the indication of the amount and the procedure related to the financial guarantee to be provided through the asylum accelerated procedure in relation to the right to entry into the Italian territory (simultaneous repeal of the Decree of September 14, 2023). The decree stipulates that in the event of arrival in the territory the foreigner is informed of the possibility of providing the financial guarantee instead of being subject to detention aimed at verifying the conditions for entry and stay; that the amount of the guarantee is set by the policer commissioner on a case-by-case basis in an amount between 2,500 and 5.000 euros; that the guarantee is provided for a period of 28 days also by a insurance policy by a bank or by relatives of the foreigner in a direct or collateral line within the third degree, legally residing in Italy or in another EU state; that the guarantee is provided in favour of the prefect of the place where the same is stipulated, provided within seven working days starting from the communication of the amount determined by the police commissioner and in any case not after the decision of the Territorial Commission adopted pursuant to Art. 28-bis, paragraph 2,Legislative Decree No. 25/2008. Finally, it is provided that in case of unavailability of the foreigner, the prefect of the place where the guarantee was given shall proceed to its immediate enforcement by paying it to the national authority.

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The duration of detention cannot exceed the time necessary for the border procedure and in any case must not last longer than 4 weeks without an extension (new Article 6bis(3)). Detention must occur in designated facilities at crisis points (hotspots), which are centres established to receive irregular migrants found near the border or following rescue operations at sea (Article 10ter(1) Unified Immigration Act).

During a high influx of arrivals, detention may occur in repatriation centres (*Centri di Permanenza per i Rimpatri*, CPRs) but only for the time needed to determine the right of entry. Under Law No 50/2023, third-country nationals and asylum seekers can be detained in CPRs or other detention facilities for a maximum of 90 days. This period may be extended by an additional 45 days if the individual is a national of a country with which Italy has a repatriation agreement. Furthermore, foreign nationals detained in CPRs may be subject to a regular extension 45 days under Law No 50/2023, with the possibility of an additional 15-day extension in cases of particular complexity. This extra period must be formally validated by the judicial authority to ensure compliance with legal standards.

Finally, the procedure for the adoption of the detention order follows the general rules for asylum seekers (Article 6(5) Legislative Decree No 25/2008), guaranteeing protection for the applicant, including written, reasoned orders from the Police Headquarters (*Questura*), communication in a language the applicant understands, participation in court hearings (often remotely through video link) and the right to legal representation. If the person is already in detention when the asylum application is submitted, the usual detention limits are suspended to allow for the review of the request, with an additional detention period of up to 60 days for the examination procedure.

Detention in the context of a return procedure

According to Article 6(3) of Legislative Decree No 142/2015, an applicant held in a detention facility while awaiting enforcement of a refusal of entry or expulsion order (as per Articles 10, 13 and 14) shall remain in detention if there are reasonable grounds to believe that the application was submitted solely to delay or obstruct the execution of the rejection or expulsion.

The detention in the context of a return procedure expands also to detained foreign national in centres in Albania, under article 1 of the Law Decree 37/2025 now Law 75/2025.

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The Legislative Decree 37/2025 converted by Law 75/2025 introduced par. 2 bis to art. 6 and modified art. 6 par. 3 of legislative decree 142/2015. The measure broadens the category of persons who can be transferred to detention facilities in Albania, including not only asylum seekers from safe countries, but also irregular migrants subject to expulsion orders.

Firstly, it is envisaged that foreigners transferred to facilities in Albania may remain there even if they have applied for asylum, if there are valid reasons to believe that the application was made solely to delay or hinder the execution of the return or expulsion.

Furthermore, it is envisaged that applicants who are in a repatriation centre - even if it is located in a border or transit area and are awaiting the enforcement of a return or expulsion measure, will remain in the centre when there are reasonable grounds to believe that the application was made solely for the purpose of delaying or preventing the enforcement of the return or expulsion.

Furthermore, failure to validate detention when there are reasonable grounds to believe that the application has been made solely for the purpose of delaying or preventing the enforcement of the refusal or expulsion does not prevent validation for other reasons provided for by law, including public order and security.

Detention in the context of national security and public order

According to art. 10 of legislative decree 251/2007, an individual may be excluded from protection if they fall under the exclusion clauses of Article 1F of the 1951 Convention, which disqualifies people involved in serious crimes, such as crimes against humanity. Additionally, an expulsion order may be issued if the person is deemed a danger to public order or state security, suspected of criminal organisation affiliation, involvement in terrorism, arms smuggling or any habitual criminal activity, including acts intended for terrorism. The assessment of danger to public order can consider prior convictions—whether final or not—including those resulting from plea agreements under Article 444 of the Italian Criminal Procedure Code. This applies especially in cases involving serious offenses, drug-related crimes, sexual offenses, facilitating illegal immigration and the exploitation of minors for illegal activities.

Detention for the purpose of a Dublin transfer

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According to Article 6ter of Law No 50/2023, asylum seekers awaiting the result of a Dublin procedure may be detained if there is a substantial risk of absconding. This detention is permitted in detention centres while awaiting a transfer under Regulation (EU) No 604/2013, provided that alternative measures cannot be implemented. The assessment of the risk is conducted on a case-by-case basis.

A substantial risk of absconding is assessed if the asylum seeker has previously evaded a transfer attempt or if at least two of the following conditions apply:

- Lack of a travel document;
- Absence of a reliable address;
- Failure to comply with reporting obligations;
- Insufficient financial resources;
- Systematic provision of false information to avoid expulsion.

Detention must not exceed the time strictly necessary for the execution of a transfer. Initially, detention is validated for a maximum of 6 weeks. If serious difficulties arise in executing the transfer, a judge may extend the detention for an additional 30 days, with a maximum overall duration of 6 weeks. The police commissioner is required to execute the transfer promptly and notify the judge without delay, and Article 6(5) applies as appropriate.

Less coercive measures (alternatives to detention)

Article 6(5) of Legislative Decree No 142/2015 provides alternatives to detention as outlined in the Consolidated Act on Immigration (Article 14 TUI). According to this act, a foreign national who has received an expulsion order may request a period of voluntary departure from the prefect. If granted, the individual will not be detained or forcibly removed from the territory. To qualify for this option, the following requirements must be met:

- No expulsion order has been issued against the individual for reasons related to state security or public order;
- There is no risk of absconding or threat to public security;
- The application for a residence permit has not been rejected as manifestly unfounded or fraudulent.

If the prefect approves the request for voluntary departure, Article 13(5.2) of the Consolidated Act mandates that the police commissioner implements one or

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more alternatives to detention, such as:

1. Obligation to surrender the passport to the police until departure;
2. Obligation to reside at a specified address where the individual can be contacted;
3. Obligation to report to police authorities as instructed.

A new regulation introduced by the Ministry of the Interior on 14 September 2023 , under Article 7bis of Law No 50/2023, details the financial guarantee required from foreigners whose asylum applications are assessed through an accelerated procedure. This accelerated procedure, as specified in Legislative Decree No 25/2008 and amended by the Cutro decree, may take place at borders or transit zones if the individual has evaded or attempted to evade controls or if they are arriving from a designated safe country of origin.

The amendment allows for the detention of asylum seekers who initiate their asylum applications without presenting a passport or equivalent document, with a maximum detention period of 4 weeks for those undergoing the accelerated procedure. To avoid waiting in detention while their asylum application is examined, asylum seekers can pay a financial guarantee of EUR 4,978.

This amount has been calculated to cover accommodation costs for 1 month, daily expenses and the cost of a repatriation flight in case of a negative decision. The payment must be made in a single instalment through an insurance or bank guarantee policy and cannot be covered by third parties.

Application for international protection and processing while in detention/impact on the asylum procedure

According to Article 6 of Legislative Decree No 142/2015, asylum seekers detained in CPRs or other facilities must be provided with the necessary information on the asylum procedure, as outlined in Article 10 of Legislative Decree No 25/2008. This includes the delivery of an information leaflet and interpretation services to ensure that the individual understands the process and their legal rights. Applicants in detention are also entitled to legal counselling at all stages of the procedure, including first and second instance determinations (Article 30 Asylum Procedures Regulation).

When an asylum application is submitted by a person already in detention, the processing of the application must be conducted under an accelerated

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procedure. If the asylum seeker's detention is still ongoing, the usual time limits for detention may be suspended to allow for a thorough review of the application, with an additional 60-day extension allowed under certain conditions (Article 14(5) Legislative Decree No 286/1998). The goal is to ensure that the detention period covers the time strictly necessary for examining the application.

The applicant is notified of the first instance decision in a language they can understand or are reasonably expected to understand (Article 10(4) of Legislative Decree No 25/2008). The notification is typically provided in writing and may be delivered either directly to the applicant or through legal representation.

Asylum seekers cannot be detained solely for submitting an application (Article 6(1)). However, detention may continue under certain conditions, such as when the applicant poses a danger to public order or safety (Article 6(2)), or when their identity or nationality needs verification. Detention can also be extended for individuals considered to be a flight risk or when the application is submitted for the sole purpose of delaying deportation. Detention is also extended to applicants for international protection hosted in Albanian centres under Law 75/2025.

Applicants for international protection typically receive their applicant's card (proof of the lodging of an application) after submitting the application. If detained, the card is usually provided by the detention authority. This process ensures that, upon release, the applicant has the necessary documentation, as required by Article 29 of the Asylum Procedures Regulation. Upon release, the applicant must be provided with documentation attesting to the lodging of the asylum application, ensuring they can continue the process while freed from detention. This is essential for maintaining their legal status and accessing reception conditions.

Applicants in detention may submit subsequent applications for international protection. However, the authorities must assess whether these applications are genuine or submitted with the intent to delay deportation. The processing of subsequent applications follows a similar expedited procedure, and detention may continue during this period if the grounds for detention persist.

The police commissioner (*questore*) is responsible for deciding on the detention of asylum seekers under the border procedure. This includes ensuring that detention conditions comply with Articles 10-13 of the recast Reception Conditions Directive (2023/1346), which concern humane treatment, respect for dignity and access to necessary services. The judicial authority oversees the

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validation of any detention extensions.

Procedural safeguards

Access to information and interpretation

The detention order is issued by the competent Immigration Police Office.

According to Article 6 of Legislative Decree No 142/2015, the detention measure must be communicated to the applicant in detention in their preferred language or a language they are reasonably expected to understand (Article 10(4) Legislative Decree No 25 of 28 January 2008).

Legal assistance and representation

According to Article 6 par. 4 of Legislative Decree No 142/2015, asylum seekers detained in CPRs or other facilities are entitled to legal counselling at all stages of the procedure, including first and second instance determinations (Article 30 Asylum Procedures Regulation).

The legal information and guidance service, ensures, through the use of qualified personnel, information on legislation concerning immigration, international protection, the protection of victims of trafficking and assisted voluntary repatriation. access to social and health services and related rights based on legal status, guarantees for unaccompanied minors and the rights and duties of foreigners, including through the dissemination of information material, which is also translated into the main languages spoken by foreigners present in the centre. Moreover, the legal information service is provided, subject to subsequent amendments and additions, in accordance with the specific requirements contained in the Directive of the Minister of the Interior of 19 May 2022, setting out the criteria for the organisation of repatriation centres.

Law Decree 145/ 2024 converted by L. 187/2024 provided several changes of the judicial procedure with regard to the validation of the detention decisions concerning international protection applicants: change of the competence of the judicial body from the specialized section of civil tribunals to the appeal courts (second grade of jurisdiction); the quaestor detention or extension decisions shall be adopted in writing, accompanied by a statement of reasons and shall contain the indication that the applicant has the right to submit pleadings or deductions

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in person or through a defense counsel; the order shall be transmitted, without delay and in any case within forty-eight hours of its adoption, to the court of appeal

Length of detention

As provided by Article 6 of Legislative Decree No 142/2015 and amended by Law No 50/2023, an applicant may be detained for the time strictly necessary, but not exceeding 30 days, to determine or verify their identity or nationality. If this verification is not possible, detention can be extended for an additional 90 days in a CPR or other detention facility, with a potential further extension of 45 days if the applicant is from a country that has a repatriation agreement with Italy.

Detention should last only for the time necessary to examine the application for international protection. Any delays in administrative procedures that are not the applicant's fault do not justify extending the detention.

If an applicant appeals the rejection of their application, they may remain detained until the court decision. In this case, detention can be extended in 60-day increments but cannot exceed a total of 12 months.

For each phase of the process, detention can only be extended based on legal grounds, and each extension requires a court's validation.

The law ensures that the detention period is limited to the minimum required for each procedural step, with strict time limits and oversight.

Judicial review of detention

According to Article 6(7) and (8) of Legislative Decree No 142/2015, an applicant detained under specific provisions who lodges a judicial appeal against the rejection decision of the territorial commission, as outlined in Article 35bis of Legislative Decree No 25 of 28 January 2008, will remain in the detention centre until the relevant judicial measure is adopted. This detention will continue for as long as the applicant is authorised to stay on the national territory due to the ongoing legal proceedings.

To ensure this process is managed effectively, the police commissioner is responsible for requesting extensions of the applicant's detention, with each extension not exceeding 60 days. The court, operating in a singular capacity, can

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grant these extensions as long as the conditions justifying the continued detention remain valid. However, it is important to note that the total duration of detention, as specified in the relevant paragraphs, must not exceed 12 months.

Specific conditions relating to detention

Conditions of detention

According to Article 7 of Legislative Decree No 142/2015, when applicants are detained in the designated centres, they are provided with essential assistance and their dignity is upheld at all times. This treatment aligns with the guidelines set out in the relevant legal framework, such as Article 14 of the Consolidated Law and Article 21 of Presidential Decree No 394 from 1999. Special considerations are made to ensure that those detained are accommodated separately and that gender differences are respected. Furthermore, efforts are made to keep family members together, where feasible, and detainees are granted access to outdoor spaces for their wellbeing.

Access to the detention centres is granted to several groups, including representatives from UNHCR and organisations acting on their behalf.

Art. 7 of Directive of the Minister of the Interior of 19 May 2022, setting out the criteria for the organisation of repatriation centres allows unrestricted access to members of the Government and of the national Parliament and those accompanying them for reasons of their office; members of the European Parliament and those accompanying them for reasons of their office; magistrates in the exercise of their functions; territorial guarantors for the protection of the rights of persons deprived of their liberty, however named; the delegate in Italy of the United Nations High Commissioner for Refugees (UNHCR) or his authorised representatives. It allows access without prior authorization to National Guarantor for the Rights of Persons Deprived of Personal Liberty; members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) pursuant to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ratified by Law No. 7 of 2 January 1989; members of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pursuant to the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on 18

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December 2002, ratified by Law No. 195 of 9 November 2012.

Authorisation from the relevant prefecture is required for family members, organisations with asylum expertise, religious representatives, journalists and others requesting access to CPRs. Journalists and politicians must follow a two-step process: they submit a request to the local prefecture, which forwards it to the Ministry of the Interior for review. After the investigation, authorisation is sent back to the prefecture.

In compliance with the Optional Protocol to the UN Convention Against Torture (OPCAT), Italy established through Law No 10/2014 the National Ombudsperson to protect the rights of detainees. The Ombudsperson has unrestricted access to CPR facilities and is responsible for ensuring compliance with national law concerning detention rights (Articles 20-23 Presidential Decree No 394/1999).

For reasons related to security, public order or administrative management, there may be restrictions on who can access the centres. However, such restrictions cannot result in a complete ban on access. These limitations are carefully managed according to ministerial guidelines.

Upon arrival at the detention centre, applicants are fully informed of the rules, as well as their rights and obligations. This information is provided in the applicant's preferred language or another language they are reasonably expected to understand, ensuring clarity in communication (Article 10(4) Legislative Decree No 25 of 2008).

Applicants in detention have the right to appoint a lawyer of their choice, with free legal aid provided for an appeal against an expulsion order and the validation of detention for asylum seekers. According to Law No 50/2023, when possible, an applicant should participate in the hearing for the validation of his/her detention in a CPR through audio/videoconferencing.

Language support is also ensured, with documents translated into a language the applicant can understand, or in English, French or Spanish. Medical care is detailed in Article 3 of the CIE Regulation, allowing the prefecture to establish agreements with public health units to provide health services to applicants in detention.

Additionally, individuals whose health conditions or vulnerabilities, as defined by Article 17(1), are incompatible with detention, are not held in these centres. In such cases, appropriate social and health services are provided to meet their needs.

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Detention of applicants with special needs

Legislative overview

The Reception Conditions Directive 2024/1346, Article 13 provides the requirements for the detention of applicants with special reception needs. The new provision adds the following safeguards:

- No detention of applicants with special reception needs whose physical and mental health would be put at serious risk.
- No detention of minors, unless there are exceptional circumstances and after an assessment of alternative of detention and the best interests of the child.
- Right to access education for minors while in detention.
- Detained families must be kept together and in a separate accommodation to ensure adequate privacy.

Article 7 of Legislative Decree No 142/2015 provides that vulnerable persons (such as minors, unaccompanied minors, persons with disabilities, the elderly, women single parents with minor children, victims of trafficking in human beings, persons suffering from serious illness or mental disorders, persons for whom it has been established that they have suffered torture, rape or other serious forms of psychological, physical or sexual violence or related to sexual orientation or gender identity, and victims of genital mutilation) should not be detained, and as part of the social and health services guarantees, a periodic assessment of the vulnerabilities requiring special assistance is ensured.

Article 19(4) of Legislative Decree No 142/2015 explicitly states that unaccompanied minors cannot be held in CPRs.

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