

**NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE
EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:
(INDICATE HERE YOUR MEMBER STATE)**

By

ESTONIA

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Illuka Reception Centre, Legal Information Centre for Human Rights and Estonian Refugee
Council was used to prepare this report.

1. NORMS OF TRANSPOSITION

- Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The main legal instrument to transpose the directive on minimum standards in Estonia is Act on Granting International Protection to Aliens, ratified by the parliament 14 December 2005. It was published in the State Gazette RT I 2006, 2, declared by the President of the Republic of Estonia with decision No. 968 of 23 December 2005. The Act became into force 1. July 2006. It is a legislative act that makes void the previous Refugee Act from the year 1997. The Act was introduced to harmonise several EU norms and international obligations of Estonia. According to the explanation note ¹ to the draft law the purpose of the draft of the Act on Granting International Protection to Aliens is to harmonise following EU directives; 2001/55/EC, 2003/9/EC, 2003/86/EC, 2004/83/EC and to regulate the temporary protection and adjust the asylum and refugee norms. The Act was not available in English during the drafting period of this report. It is available now in English at the page <http://www.legaltext.ee/indexen.htm>.

- Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,...)
- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;

¹ Seletuskiri Välismaalasele rahvusvahelise kaitse andmise seaduse eelnõu juurde, http://eoiigus.just.ee/?act=dok&subact=1&DOK_W=124238, 08.06.2006

- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English if they are available.

The most important is the Act on Granting International Protection to Aliens, (further used as Act), there are some regulations in preparation that will be issued under the Act. The regulations are not available before the enforcement of the Act (1 July 2006). The electronic version of the Act in Estonian language is available at the State Gazette electronic webpage <https://www.riigiteataja.ee/ert/act.jsp?id=974633> The English version of the Act can be found from www.estlex.ee

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Estonia is not a federal state; therefore the Act is applicable in the entire country. Laws, including the Act, are adopted by the parliament and declared by the President of Estonia. Ministries and a Government have a right to adopt regulations based on the Act. At the moment regulations are not available, but there will be regulations regulating procedures at the border and granting residence permit to the family members.

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The norm that is used to transpose the directive is legislative, but also the regulations are under preparation in the Ministry of Interior.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Estonia tends to copy the provisions from the directive. According to the Act, the minimum standards of reception of asylum seekers will be applied from 1st July 2006, but at the moment it is difficult to predict if new norms, introduced in the directive, will in practice create difficulties in the implementation.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

There is a problem of translation of the directive from English to Estonian language. Art 21 of the directive, which is about appeal procedure, is not properly translated and creates misunderstanding in the adoption of the norm. The Estonian law is designed in the way the Estonian translation of the directive states. So the law is based on the Estonian version of the directive.

Also the special conditions for reception of victims of torture and violence or other vulnerable groups except minors, are not mentioned in the law. At the same time it is possible for the asylum seeker to benefit from the Victim Support Act² which states that the victims of violence have to be protected. As there is no practice yet, with the new legislation with groups who need special treatment, it is difficult to predict, how the laws will be applied.

There is a problem of transposition of art 10§2 of the directive which requires that access to the education system shall not be postponed for more than three months for the date the application for the asylum was lodged by the minor or the minor's parents.

The new Act does not have provisions about schooling of asylum seekers, the right and obligation to go to school is regulated by another legislation see answer to the Q 31. There is no time limit how fast the schooling should be granted. Our general school system also applies to the asylum seeker. In practice children will be taken to the school ASAP. According to the Ministry of Interior children get into a school within three months.

Also the children have an obligation to go to school up to the age 16. After that age there is no obligation to go to school and to provide schooling. As we do not have practice with children over the age 16, it is difficult to predict the practice of a requirement of art 10 which says that member states shall not withdraw secondary education for the sole reason that the minor has reached the age of majority. After the age of 16 the schooling is purely voluntary.

The provisions of Article 10 §1 of the directive is translated in the Estonian language directive like that “ Member states can give to minor children of asylum seekers and to asylum seekers who are minors access to the educational system under similar conditions as nationals of the host Member State....” Which makes the art 10§1 of the directive as **an option not an obligation**.

Article 17 is not transposed; the specific situation of disabled persons, elderly people, pregnant women, and single parents with minor children, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence is not regulated. As above mentioned the person can rely on some provisions of the Victims Support Act. But in order to be clear it should be mentioned in the Act on Granting International Protection to Aliens.

Article 19 §4 of the directive. The confidentiality clause is generally stated in art 13 of the Act. So the confidentiality must be followed in every step in the procedure. Although in some parts of the new act the confidentiality is not very well regulated a person can usually rely on the art 13 of the Act.

The training of persons, working with asylum seekers, is not very well regulated. Art 17 clause 5 of the Act says “If needed a person with relevant knowledge will participate in procedural acts that are performed with minors.” It is not clear who decides when the participation of a professional, who has had a special training, participates during the procedural acts performed with minors? There is also no general provision which states that people working with minors in the asylum procedures have to have appropriate training. And

² State Gazette RT 2004, 2,3

the person with special training will participate only **during procedural acts** performed with minors.

Article 14§5 and Article 24§1 of the directive.

It is not stated in the law that the people working with asylum seekers must have passed a special training. In practice they have had trainings organised by government and non-governmental organisations. Also please look the previous answer.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

No, there has no preparatory study made. There is an explanation letter explaining why it was important to design the new law.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

Neither scientific book nor article is published about the directive in Estonia.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There is no decision of jurisprudence based on the implementation of the new rules of transposition of the directive as the new Act will be enforced on 1st July 2006.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The asylum application has to be placed to the Border Guard Administration or the Citizenship and Migration Board. Citizenship and Migration Board is the main office

reviewing the asylum applications. An asylum application is an application submitted by an alien in order to be recognized as a refugee or to be recognized as a recipient of subsidiary protection and to get international protection.

The asylum application has to be placed as soon as possible. The Act also introduces new forms of protection additional to the refugee status, which are subsidiary protection and temporary protection.

Asylum applicants and applicants of residence permit on the basis of temporary protection (hereinafter applicant) shall be granted the rights and freedoms arising from the Constitution, laws and other legislation and international treaties of the Republic of Estonia, legal acts of the European Union, generally recognized norms of international law and international customary law.

After submission of an application for asylum, the person conducting the procedure without delay shall perform the following acts:

- 1) receipt of a formal asylum application;
- 2) examination of the person and his or her personal belongings;
- 3) deposition of personal belongings and documents;
- 4) identification;
- 5) interviewing concerning the arrival to Estonia or to the border of Estonia and the circumstances which constitute the basis for application for asylum;
- 6) photographing and fingerprinting of an alien who is at least 14 years of age;
- 7) forwarding of the data of an applicant at least 14 years of age for comparison to the central unit of Eurodac-system according to the regulation 2725/2000/EC (OJ L 316, 15.12.2000, p. 1-10), and the regulation 407/2002/EC (OJ L 062, 5.03.2002, p. 1-5) for the regulation (EC) 2725/2000
- 8) medical examination, if necessary;
- 9) DNA testing and fingerprinting of an alien less than 14 years of age, if there is no other way for identification.

The acts shall be performed even if an applicant withdraws his or her asylum application.

The data that is collected within offence procedure can be used in asylum proceedings.

In the decision to fingerprint and DNA testing of an alien less than 14 years of age, the rights and interests of the alien shall be taken into consideration above all. An applicant shall be examined by a person of the same sex.

An applicant will be detained for the time of performance of the acts and he or she is required to stay in the premises assigned to him or her. If the performance of the acts continues for longer than forty-eight hours, the applicant can be detained with the permission of an administrative court. As in practice there is no primary or first reception centre the applicants are not detained.

In the case of the application submitted at the border after performance of the acts, the border guard authority shall send the applicant to the reception centre or initial reception centre and shall forward the application for asylum together with the deposited personal belongings and documents without delay to the Citizenship and Migration Board for the further proceedings.

When the application is submitted in the CMB after performance of the acts, the Citizenship and Migration Board will send the applicant to the reception centre or initial reception centre.

After the application is submitted and the person is inspected the applicant will be based on initial reception centre or reception centre subordinating to the Ministry of Social Affairs. Which is now responsible for the reception conditions like housing, money allowance etc.

The initial reception centre shall, as necessary, arrange for the following assistance to asylum applicants during asylum proceedings and in cases specified in clause 6 of §62 of this Act³, to applicants of residence permit on the basis of temporary protection, during temporary protection proceedings:

- 1) temporary accommodation;
- 2) food, essential clothing and other necessities and toiletries;
- 3) emergency care and medical examinations;
- 4) essential translation services;
- 5) information regarding their rights and duties;
- 6) transportation needed for the performance of acts prescribed by law;
- 7) provision of other essential services.

The reception centre shall, as necessary, arrange accommodation and supply of food assistance (supply of foodstuffs or provision of food), supply of essential clothing, other necessities and toiletries, and supply of money for urgent small expenses) within the limits to aliens residing in the reception centre and to aliens residing outside the reception centre on the basis of specific clause, to the applicants during asylum procedure or temporary protection procedure.

Additionally is provided:

- emergency care and medical examinations;
- essential translation services and Estonian language instruction;
- information regarding their rights and obligations;
- transportation needed for the performance of acts prescribed by law;
- and other essential services

The Ministry of Social Affairs is responsible of the reception centres.

Person can stay in the reception centre until the end of the asylum procedure. When asylum is granted the person has to leave the centre, also when the final decision is made the person has to leave the centre.

Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure).

Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Yes, there are some differences in the reception conditions. There are different categories of protection.

³ With the permission of an administrative court judge, an applicant for residence permit may be required to stay at the initial reception centre specified in §12 of the Act in the following cases: 1) the applicant for residence permit has repeatedly or seriously violated the internal procedure rules of the reception centre or the Ministry of Social Affairs; 2) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

- 1) application for asylum to get the refugee status under the Geneva Convention
- 2) application for temporary protection
- 3) application for subsidiary protection.

The unaccompanied minor has special provisions under the law. (§ 17 of the Act)

Asylum applicants and applicants of residence permit on the basis of temporary protection (hereinafter *applicant*) shall be granted the rights and freedoms arising from the Constitution, laws and other legislation and international treaties of the Republic of Estonia, legal acts of the European Union, generally recognized norms of international law and international customs.

An alien who files a complaint to the court, regarding the decision made on the asylum application, during the term of complaint has the same rights and duties as an asylum applicant. During the court procedure an alien has the same rights and duties as an asylum applicant, if the court has stopped the compulsory enforcement of removal order.

An applicant has the right to:

- 1) receive information within fifteen days after the date of submitting asylum application or application for residence permit, orally and in writing in a language which he or she understands, about his or her rights and duties and consequences for not fulfilling the duties in the asylum procedure, the residence permit procedure on the basis of temporary protection and during validity of international protection;
- 2) be in contact with the Office of the United Nations High Commissioner for Refugees;
- 3) victim support services pursuant to the procedure provided in the Victim Support Act, if necessary;
- 4) state legal aid pursuant to the procedure provided in the State Legal Aid Act;
- 5) to appeal to the court if their rights and freedoms are violated.

An asylum applicant has a right to have a representative during asylum proceedings, except upon provision of explanations or performance of other procedural acts which, arising from their nature must be carried out personally. This right is not provided for the applicant of the temporary protection.

Asylum applicants may contract employment in Estonia if the Citizenship and Migration Board within one year after the date of submitting asylum application has not made a decision, independent of asylum applicants or if an asylum applicant has protested the rejection of asylum application in the court, on the condition that employment does not hinder the asylum proceeding, court proceeding or execution of a decision. This right is not provided for the applicant of the temporary protection. Also the right to work is granted, after one year of application submitted, only to the asylum applicant who applies for the refugee status or for the subsidiary protection.

Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request.

There is a special procedure at the border.⁴ The border guards have to forward the application, the personal belongings to the CMB and take the applicant to the Reception Centre or to the initial reception centre. Border guards have a right to send the applicant back from the border in cases mentioned in § 20 1) and 2) of the Act.

The reasons are following:

- 1) another country can be considered the initial first country for asylum, i.e. asylum or other protection has been provided to the applicant in another country, and such protection is still accessible to the applicant;
- 2) the country of origin of the applicant can be considered as a safe country;

and in §21 1) subsection 1) and 2) which states the cases for rejection of asylum application.

The cases when the asylum application can be rejected are following:

- 1) Another country is responsible for the review of the application for asylum. according to an international agreement or regulation 343/2003/EC of the Council of the European Union that specifies the criteria and mechanisms for designating the member state that shall be responsible for the process of reviewing an application for asylum submitted in any member state by a third country national (EC 050, 25.02.2003, p. 1–10);
- 2) The applicant has arrived to Estonia through a country which can be considered as a safe country

This procedure at the border can be considered as accelerated procedure although it is not named like this.

The decisions made under above mentioned procedure can be appealed to the Administrative Court although appealing to the court will not stop the expulsion automatically.

§21 section 4 says that an alien shall be expelled from Estonia to a safe country on the basis of the decision to reject his or her application for asylum made on the basis of clauses 1) and 2) of §21.

The appeal on an asylum decision does not have a suspensive effect. If the application is rejected the person has to submit together with the appeal on the decision to stop the enforcement of the precept to leave Estonia. If he does not appeal, the precept to leave can be enforced automatically.

§ 27 of the Act regulate the Dublin II cases. If it is clear that another state is responsible for the examination of the asylum claim, the person will be sent out without precept to leave or court order to the country where the asylum application must be examined.

Border guards are involved in the admissibility procedure and it is regulated in §20 and §21 of the Act.

Clearly ungrounded application is specified in §20 of the Act.

Application for asylum shall be deemed to be clearly ungrounded if:

⁴ § 16 of the Act

1) another country can be considered the initial country for asylum, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;

2) the country of origin of the applicant can be considered as a safe country;

3) the applicant holds a residence permit in Estonia;

4) the applicant has been refused from giving an asylum on the basis of this Act or the application has been rejected on the basis of this Act and the applicant has not produced any new essential evidence of which the applicant was unaware during previous asylum proceedings;

5) the applicant has submitted the application for asylum under a false name or has destroyed, damaged or failed to present a document or other evidence of essential importance to the processing of his or her application for asylum, or has presented, without good reason, falsified documents or other false evidence;

6) the applicant has knowingly provided incorrect information or explanations upon the processing of his or her application for asylum, or has knowingly failed to provide information or explanations of essential importance to the processing of his or her application for asylum;

7) the applicant has submitted the application for asylum in order to avoid the enforcement of return, expulsion or extradition procedure, provided that earlier application for asylum had been possible;

8) the applicant has knowingly ignored the duties provided in this Act, has refused or is refusing from photographing and fingerprinting or DNA-testing or fails to comply with surveillance measures;

9) the applicant's actual objective is to settle in Estonia for other reasons, including to contract employment or improve his or her living conditions;

10) the applicant is unable to provide credible evidence proving that his or her fear of persecution is well-founded;

11) the applicant's explanations are inconsistent, conflicting, improbable or lacking in circumstantial or personal details;

12) clearly the applicant cannot be considered a refugee according to the law;

13) the applicant has submitted a new application for asylum with new personal data;

14) for no good reason the applicant had not submitted an application, provided that earlier application for asylum had been possible;

15) the applicant has not followed, without good reason, the duties specified in clauses (2) 1-3), 10) of section 11 of this Act and / or clause (1) in section 23 of this Act;

16) the applicant has arrived to Estonia illegally and has not contacted the Citizenship and Migration Board and / or has not submitted the application for asylum as soon as possible;

17) the applicant poses a threat to national security or public order or has been deported from Estonia under these circumstances;

18) the application of a parent of a minor applicant has been rejected;

19) the minor applicant independently submits an application for asylum that has already been submitted by his or her legal representative.

Circumstances excluding recognition as refugee or recipient of subsidiary protection are written in §22

(1) An alien shall not be recognized as refugee if:

1) article 1 (D) of the Geneva Convention applies to him or her;

2) he or she holds a permanent residence permit in Estonia;

3) there is good reason to believe that he or she has committed crime against peace or humanity or war crime specified in international legal acts;

4) there is good reason to believe that he or she has committed serious apolitical offence before entry to Estonia;

5) there is good reason to believe that he or she is guilty of committing an act of performance that is contrary to the goals and principles of the United Nations.

(2) A serious apolitical offence specified in clause (1) 4) of this section is among other an especially brutal act of performance, that allegedly proceeded from political reasons.

(3) An alien shall not be recognized as a recipient of subsidiary protection if:

1) there is good reason to believe that he or she has committed crime against peace or humanity or war crime specified in international legal acts;

2) there is good reason to believe that he or she has committed serious crime;

3) there is good reason to believe that he or she is guilty of committing an act of performance that is contrary to the goals and principles of the United Nations;

4) there is good reason to believe that he or she poses a threat to national security or public order;

5) he or she has left the country of origin with regard to committing an act other than specified in clauses 1)-4) of this section that result in the punishment of loss of freedom.

(4) The bases specified in clauses (1) 3)-5) and clauses (3) 1)-4) of this section shall be applied to an alien who in any way took part in the given acts of performance.

B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The applicants have to stay in the reception centre in some cases they can be placed to the initial reception centre. In practice the initial reception centre does not exist so the asylum seekers will be sent to the Illuka Reception Centre.

The person can be detained in the initial reception centre for 48 hours.

According to the §32 of the Act:

An applicant may temporarily stay in the office of the Citizenship and Migration Board, if necessary for the performance of acts of the asylum proceedings.

With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre after 48 hours in following cases:

1) the identity of the applicant has not been not ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;

2) for establishing circumstances relevant to the asylum proceedings if the applicant does not co-operate in establishment of the circumstances or hinders the establishment thereof;

3) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;

4) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre;

5) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided by this Act;

6) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Monetary benefits are regulated in §36 of the Act. Additionally reception centre provides housing and access to medical treatment for all asylum seekers.

The monetary benefit has to cover the minimum subsistence level of an applicant. The minimum subsistence level in Estonia is currently 750 Estonian kroon (48 EUR) in a month and is not sufficient to manage. The monetary benefit paid to an applicant is the amount of subsistence limit established by the Government on the basis of the minimum consumption. The reception centre can either give food or to pay the money. Usually the money is given.

An asylum seeker who is working or has other means for survival does not get the monetary benefits or other benefits provided by the reception centre, except housing. Every second family member gets 80% of the amount that is provided to the applicant. Additionally the applicant can receive 10% of the money that is the minimum subsistence level in Estonia, for small expenses. It is around 7 Euros.

The reception conditions are different from the general system of social aid for national or legally residing aliens. When the applicant gets a positive decision he or she also gets the access to the general social aid system, but in the case of an asylum seeker it is complicated, as he or she has to have a registered place of living in order to access the social aid. Social aid is provided by the local municipality. The placement of a refugee to the local municipality is organised by the Ministry of Social Affairs.

For the 48 EUR the asylum seekers have to buy food, as in practice they have to cook by themselves.

In practice the hygiene products, other goods of first need are provided additionally to the money. Sometimes second hand clothes are provided by the Reception Centre. If the person is in a real need of some clothes or shoes, the individual decision will be made by the director of the reception centre and new clothes and shoes will be bought.

Dishes, washing powder, blankets, sheets, towels are provided by the reception centre. The asylum seekers have to do their laundry and keep the rooms and kitchen tidy by themselves.

According to the Iluka Reception Centre General Regulation⁵ art 9

The obligations of the Centre is to:

1. organise accommodation of a foreigner during the initial interview and during the accelerated procedure⁶
2. accommodate the asylum seeker during the asylum procedure
3. organise catering or provide food products of a foreigner during the initial interview and during the accelerated procedure
4. provide essential clothing and other initial necessities and hygiene products
5. provide money for miscellaneous expenses⁷ and according to the asylum seekers wish, catering or to provide food products and essential clothing, will be changed to the monetary benefit.⁸
6. organise emergency aid and checking of a health conditions
7. organise necessary translation
8. organise Estonian language courses to the asylum seekers
9. inform asylum seekers about their rights and obligations
10. provide other necessary services

B. Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for

⁵ Illuka Varjupaigataotlejate Vastuvõtukeskuse põhimääruse kinnitamine, 1. September, 1998 regulation no 47 RT 1998, 273/274, 1134

⁶ As we do not have in practice initial reception centre the persons who does not have a status of asylum seeker yet can be placed also to the reception centre.

⁷ The money of miscellaneous expenses is 70 EEK approx 4,5 EUR per month.

⁸ This monetary benefit is totally 48 EUR and the practice is that the asylum seekers take money and not the food .

the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The asylum seekers get the same amount of monetary benefit that the nationals in Estonia. Nevertheless the amount is not sufficient to manage and ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Also the fact, that asylum seekers do not have a social network of people who could help them as the local nationals have, should be taken account. The fixed minimum salary in Estonia is 3000 kroons (192 EUR) per month.

In practice there is no initial reception centre in Estonia so there is nothing to assess. Please look also at answers given to the question no 33.

48 EUR per month is the official minimum level of survival in Estonia. In practice it is not normal. It is difficult to survive with 48 EUR per month in Estonia. At the same time there is no discrimination of asylum seekers in this matter, as Estonian nationals are treated in the same way.

Additionally one can hear claims that asylum seekers have in fact even better treatment as they do not need to pay for housing, they get toothpaste, shampoo, washing powder etc. from the government, which is not a case of a national in the same situation. Nationals can claim for housing benefits if their income is less than 48 EUR, but also not for the full amount to be paid by the local municipality. The amount reimbursed depends from the size of the apartment one lives etc. The application of social benefits is a complicated system and is not directly related to asylum seekers.

The reception conditions does not ensure a standard of living adequate for the health of applicant, because the provided money is not sufficient, it is not healthy to eat bread and water every day, but it can be claimed that 48 EUR in a month may ensure subsistence.

5. PROCEDURAL ASPECTS

Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

There is a distinction between asylum applicant who applies for refugee status and the person in need of other kind of international protection. Special rules apply to the temporary protection. Refugee is the one who satisfies the specific criteria under Geneva Convention. According to the §3 it is enough to submit asylum application that covers the application for the refugee status and for the subsidiary protection.

B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention,

in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The scope of application of reception conditions is extended to refugees, people in need of subsidiary protection and temporary protection.

Temporary protection is provided for one year and he or she gets the living permit. The reception conditions are mainly the same. The right for a lawyer is not explicitly written to the law in the case of temporary protection. As there is no practice it cannot be said how the law will be interpreted in that case.

- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Estonia does not accept diplomatic or territorial asylum request.

- Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?**

Generally yes. The person has to submit the asylum application and this gives him a right for reception conditions. When a person is detained because of previous criminal or administrative offence, he has to carry the punishment to the end, before he or she can be transferred to the reception centre.

- Q.15. Explain when reception conditions end, for instance after refusal of the asylum request** (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to the previous practice the status of an asylum seeker is maintained until all means of appeals are used.

- Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?**

The person who has received temporary protection has a right to submit an asylum application.⁹

Both options subsidiary protection and asylum is reviewed in the same process, so the person cannot apply for asylum again and again. If there is a negative decision on asylum and on subsidiary protection the person is subject to be returned to his country of origin or legal stay.

There is a clause in the law that second asylum application will be rejected.

⁹ §69 of the Act

Q.17¹⁰. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

Yes, an asylum seeker has a right to receive information on his or her rights and obligations and the consequences for not fulfilling the duties in the asylum procedure, the residence permit procedure on the basis of temporary protection and during validity of international protection, in the asylum procedures within 15 days in writing and in oral in the language he or she understands.

B. Is the information provided in writing or, when appropriate, orally?

The information is provided in writing and also orally. There might be problems with exotic languages, as there are not enough translators in Estonia to provide translations. And many languages are not covered. The asylum seeker gets a leaflet where his rights and obligations are shortly explained. For example right to a lawyer, right to contact UNHCR, obligation to stay in the reception centre, tell the truth, and obey the laws of Estonia etc. Giving false information about asylum claim and identity can be a reason for rejecting the asylum claim. There are some languages in which the leaflets are available.

B. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

Yes. Russian and English are the mostly used languages. Translators from abroad is used in case there are no language speakers in Estonia.

C. Is the deadline of maximum 15 days respected?

Yes, usually the deadline is respected. In cases there is no translator available the information might reach the applicant later than 15 days. If the applicant understands Russian or English, the information is available orally and in writing.

Q.18¹¹. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extend a mandatory provision):

A. Is there a list of organisations addressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

There is a list of NGOs and organizations on the web site of the Citizenship and Migration Board, which can assist asylum applicants. The contact details of appropriate NGOs are also

¹⁰ To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹¹ To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

provided during the initial interview and at the reception centre. Because of low number of human rights NGOs working in Estonia in the given field, it is possible to predict that the list is comprehensive. The information concerning health care is insufficient. The health care is organised through the Reception Centre. The information about health care is given only orally. The Reception Centre has contracts with therapists from Jõhvi and Tallinn. The NGO-s do not provide health care.

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Information about healthcare is provided only orally, information about legal assistance possibilities orally and also in written.

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

In general the information is available in English and Russian. If possible the translation to other languages is provided.

D. How many organisations are active in that field in your Member State?

There is one NGO that provides legal counselling at the moment.

Q.19. Documentation of asylum seekers (see article 6):

A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

Asylum seeker gets a document called certificate of an asylum seeker.¹² It is not a proof of identity under the law of Identity Documents Act. This creates a major problem. For example to receive post or money sent to them from the post office, to open a bank account etc. it is not possible to use these certificates for these actions. The document has a picture and a name, birthdates and the time until when it is valid. It just certifies the status of an asylum seeker.

B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?

Yes, the document is not issued when the procedure of admission to the asylum procedure is going on.

C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

It is given for a certain period of time and must be renewed by the request of an applicant.

¹² § 51 of the Act

D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected¹³?

There have been cases when the deadline of the delivery of the document has been violated and person has received the document only after couple of weeks.¹⁴ The 3 days rule will become obligatory only after 1st July 2006.

D. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

No travel document is provided. As the directive says Member States may provide a travel document, it shows that it is not an mandatory provision and Estonia is not issuing such documents.

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

Yes, there is a separate system of registration of asylum seekers and it is separate from the registration of aliens. The information what is the content of the database is not available for the public.

Q.20. Residence of asylum seekers¹⁵:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Yes, asylum seeker is free to move on the entire territory of Estonia, but they have to stay in the reception centre from 22.00-7.00 during the night. As the centre is in the remote area and there is very limited bus connection from the nearest village it practically makes impossible to go far from the centre.

B. About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).

Usually the asylum seekers have to stay in the Reception Centre. If it is because of the health reasons the asylum seeker can get a permission to stay in another place. Or he or she has enough money to live outside the reception centre or Estonian citizen or a person with a residence permit covers his living expenses outside of the Reception Centre.

¹³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁴ Arjupin, Andrei, Practical contribution to the comparative study done by the Odysseus network for the European Commission on the implementation of the Directive on reception conditions, 17.05.2006

¹⁵ Nota bene: the case of detention is covered by other questions and should be ignored under this question.

- C. **About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).**

There is only one Reception Centre in Estonia so all asylum seekers will be placed there. In case he or she has enough money to live outside the reception centre or Estonian citizen or a person with a residence permit covers his living outside of the Reception Centre the asylum seeker can ask a permission to live outside of the Reception Centre.

- D. **If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)¹⁶**

Until now there have been less asylum seekers than the capacity of Estonia to accept is. There are 35 places in the reception centre. The Ministry of Social Affairs has contracts with private accommodation providers in order to place the asylum seekers in other places, in case of emergency.

- E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

The asylum seeker is required to stay in the initial reception centre around the clock while they are required to stay in the reception centre only during night-time. The applicant has to apply to the CMB with an application to get a permission to stay outside of the reception centre. He or she must have a place to live and must have financial means to cover his expenses. She has to register herself and usually the permission is given.

- Q.21. A. **Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

¹⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Yes, there are provisions where the reduction or withdrawal of reception conditions can happen. They are regulated in §11 and §12 of the Act.

§ 11 section 4) of the Act says: “If an asylum applicant had at the time when he or she used the services specified in clauses (2) 1-7) of section 12 of the Act, except emergency care, enough financial resources to cover these services, he or she is required to compensate the according costs.”

The initial reception centre shall, as necessary, arrange assistance to asylum applicants during asylum proceedings and in cases specified in clause 6) of § 62 of the Act to applicants of residence permit on the basis of temporary protection during temporary protection proceedings. The necessity is evaluated by the director of the reception centre.

The services and foodstuff that should be reimbursed and that are considered necessary according to art 12:

- 1) accommodation;
- 2) supply of foodstuffs or provision of food, supply of essential clothing, other necessities and toiletries, and supply of money for urgent small expenditures within the limits;
- 3) medical examinations;
- 4) essential translation services and Estonian language instruction;
- 5) information regarding their rights and duties;
- 6) transportation needed for the performance of acts prescribed by law;
- 7) provision of other essential services

When a person has enough financial resources to cover these services, he or she is required to compensate the according costs. The necessity is evaluated by the reception centre.

B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice¹⁷?

The asylum application has to be submitted as soon as possible. There has been no known practice were the asylum claim is rejected because of late application.

C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

When the rights of an asylum seeker are violated, the asylum seeker has a possibility to file an administrative claim, under general rules either to the Social Ministry or to the Administrative court. It is not specified in the law who will make the decisions of withdrawal of the reception conditions. If it is related to the reception conditions in the Reception Centre the director of the Centre is responsible and can make decisions. The Centre subordinates to the Ministry of Social Affairs, which has to control the situation in the Reception Centre.

D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

¹⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Generally it should be respected. The subsidiary protection clause is introduced to the Estonian legislation, which contains the protection under European Convention of Human Rights. Refugee is not sent back to the country where his or her life is under threat.¹⁸ The access to emergency healthcare is organised by the reception centre. There is no practice about how the access to the emergency healthcare is organised for those in the detention centres.

- E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome¹⁹?

No appeals or decisions yet as the law was enforced on 1st July 2006.

Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

It will be the Administrative Court or Ministry of Social Affairs in case the reception conditions are violated by the Reception Centre. All the decisions made by the Citizen and Migration Board can be appealed in the Administrative Court. If the Administrative Court agrees with the applicant the court send the case back to the CMB for a review and for making a new decision. The Administrative Court cannot grant asylum or subsidiary protection. Therefore it can be said that the appeal system does not guarantee that a person can get asylum after court decision. The case is before the judge but the judge cannot decide if the person must get international protection or not.

The time for appeal is written in the decision and as the decision is translated orally into the language the person understands. He or she will get the information about appealing possibilities orally at the time the decision is delivered.

On the information leaflets that are given to the asylum seekers it is not mentioned that he or she has a right to appeal also on reception conditions. The right of an appeal is more generally explained. The appeal against the refusal of protection should be placed within 10 days of the reception of the decision.

B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

According to The Act on Granting International Protection to Aliens § 10 an asylum seeker has a right to legal aid guaranteed by the state pursuant to the procedure provided for in the State Legal Aid Act. According to the State Legal Aid Act in Estonia its purpose is to ensure

¹⁸ §50

¹⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

the timely and sufficient availability of competent and reliable legal services to all persons.²⁰ According to the State Legal Aid Act §6 a natural person may receive state legal aid if the person is unable to pay for competent legal services due to his or her financial situation at the time the person is in need of legal aid or is able to pay for legal services only partially or in instalments or whose financial situation does not allow meeting basic subsistence needs after paying for legal services.

§10 of the State Legal Aid Act says: “An application for state legal aid in court proceedings as a party to a proceeding in civil, administrative or misdemeanour matters shall be submitted to the court conducting proceedings in the matter or the court whose jurisdiction would include conducting proceedings in the matter.”

If an applicant wishes to receive state legal aid for the preparation of a statement of claim or a petition in proceedings on petition or for the preparation of an appeal in administrative court proceedings or proceedings regarding a misdemeanour matter, he or she shall submit an application to the court whose jurisdiction includes hearing the action or reviewing the petition in proceedings on petition or the appeal.

An application for state legal aid in the form of representation in pre-trial proceedings in a civil matter, in administrative proceedings or extrajudicial proceedings in a misdemeanour matter, preparation of a legal document or other legal counselling or representation shall be submitted to the county or city court of the applicant’s residence or seat or of the presumed location of provision of legal services. If an applicant for state legal aid has no residence in Estonia, he or she may submit an application to the county or city court in the territorial jurisdiction of which he or she is staying.

An application for state legal aid in the form of representation in enforcement proceedings shall be submitted to the court competent to process an appeal against the activities of a bailiff conducting enforcement proceedings.

In reality it is very difficult to get the free legal help in order to submit the appeal. The problems are following:

- 1) the appeal has to be made already in ten days, and
- 2) the person has to ask for the free legal advice from the court, as the judge can decide if the free legal help is needed or not.

Additionally the person has to present the legal arguments against the decision to the court together with the request for free legal counselling. All this has to be done in Estonian language. Also Estonian practicing lawyers are not trained in refugee law, there are very few who have had a chance to have a law course on refugee law.

C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones²¹?

No, not yet as the new legislation became into force on 1st July 2006.

- D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

²⁰ § 2

²¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Ministry of Social Affairs has to monitor the work of the Reception Centre. It is also possible to appeal to Chancellor of Justice who also acts like Ombudsman in Estonia. Because Illuka reception centre is under the Ministry of Social Affairs, the asylum seekers have the right to submit a complaint regarding reception conditions to the Ministry of Social Affairs. In addition the asylum seekers always have the right to turn to the court or ask for an opinion from the Chancellor of Justice.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).

§ 7 of the Act regulate who is considered to be a family member of an asylum seeker. It is same as stated in art (2) of the directive. Families can live together. There is one family room in the reception centre.

A family member of an asylum applicant is:

- 1) a spouse of the applicant;
- 2) an unmarried and minor child, including adopted child of the applicant;
- 3) an unmarried and minor child, including adopted child of the applicant and the spouse.

A family member of a refugee and a recipient of subsidiary protection is:

- 1) a spouse;
- 2) an unmarried minor child, including adopted child of the applicant and the spouse;
- 3) a ward and a supported unmarried minor child, including adopted child of the applicant or the spouse. In a case of shared guardianship the approval of a sharing guardian is needed;
- 4) an unmarried adult child of the applicant or the spouse, if due to the state of health or disability of the child he or she is unable to cope independently;
- 5) a parent or a grandparent under the support of the applicant or the spouse, if the country of origin does not pay any subsidy related to other family ties.

A family member of an unaccompanied minor refugee and an unaccompanied minor recipient of subsidiary protection is:

- 1) his or her parent;
- 2) his or her guardian or other family member if he or she has no parents or they cannot be found, except in case it would be in conflict with the rights and interests of a minor.

A family member of a recipient of temporary protection is:

- 1) his or her spouse;
- 2) his/her or his/her spouse's unmarried and minor child, including adopted child;
- 3) a close relative who is not specified in clauses 1) and 2) of this section and who lived with him and was dependent of him in the country of origin.

The family members who are specified in this act are considered family in case the family existed in the country of origin, including if marriage was contracted before the arrival to Estonia. An unmarried partner is not considered to be a family member.

- Q.24.**
- A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**
- B. What is the total number of available places for asylum seekers?²² Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There is only one reception centre for asylum seekers in Estonia – Illuka reception centre for asylum seekers. The centre can accommodate a maximum of 35 persons. No private housing is available at the moment. In case of mass influx the housing may be organised in private houses or apartments.

- C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?²³

There have been less applicants than the places available. Until now it is sufficient.

- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

In urgent cases the accommodation is rented from private accommodation providers.

- Q.25. Accommodation centres (important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**
- A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No. According to the law during asylum proceedings the applicant as a rule has to live in the reception centre.

- B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No. The limit is connected with the time of examination of the application. The applicant loses the right for accommodation upon receiving the decision on his or her asylum application. In practice, however, the Illuka reception centre permitted the applicant to stay in the reception centre until the final solution of the asylum case. Under the new Act person who

²² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

gets the positive answer can stay in the Reception Centre until the local municipality is found where he or she can settle. In case the applicant refuses to go to the municipality he can stay in the reception centre only for two months after receiving the positive answer on his application.

- B. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Illuka Reception Centre for asylum seekers has its internal procedure rules for asylum applicants. There is a Statute of the Illuka Reception Centre adopted by the regulation of the Ministry on Social Affairs of 01 September 1998 nr 47. Also, the director of the Illuka Reception Centre has issued an internal regulation by the decision of 27 December 2002 nr 73. The general rules come from legal acts. There is only one public reception centre in Estonia.

- C. **Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?**²⁴

The rules for asylum seekers include a provision called “Violation of Rules“, which says: „Institutions of legal protection are notified of all violations that are in contradiction to the law or cause substantial property damage. Applicants undertake to comply with these rules by signing the relevant supplementary confirmation.“ - therefore the rules do not foresee any sanctions.

The rules for asylum seekers also include the following point.

“An Applicant who has been absent from the Centre for more than one day (24 hours) and whose whereabouts are unknown is declared ‘wanted’ and the relevant notification submitted to the (immigration) authorities. If an Applicant destroys, looses or damages the Centre’s property, he/she is obliged to compensate damage caused.”

In case of severe disturbance or forbidden objects/substance, the reception centre turns to police who decides the designation of punishment.

As a principal rule there is a possibility to appeal to the Ministry of Social Affairs or to the court or to the Legal Chancellor although it is not explicitly written in the legislation.

²⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

D. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

No. Asylum seekers are not involved in the management of the centres.

E. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

The internal procedure of Illuka Reception Centre– Rules for Asylum Applicants foresee among others the following:

Applicants prepare their own meals; applicants are required to clean up after preparing food. Applicants are required to: - wash their bed linen and clean their room regularly - help and keep common rooms clean and tidy - comply with the work and time schedules of the Centre - participate in activities organized by the Centre.

There is no possibility to do real work in the reception centre. The applicants are involved in maintenance work in the reception centre on voluntary basis only.

Working is not allowed for the asylum seekers. According to the new Act after the 12 months of application submitted the asylum seeker can get a permission to work. According to Employment Services and Benefits Act § 3 an asylum seeker has the right to employment services and benefits laid down in this Act in the terms of the Act on Granting International Protection to Aliens.

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

The asylum seekers can contact via email or make a call, send a letter. There is internet available in the Reception Centre to asylum seekers.

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

There are no restrictions to communicate except the financial means. They might have no money to make a call. The uncomfortable location of the Illuka Reception Centre (almost on the border with Russia, in the forest, bad transportation connection, bus is going there three times per week) plays as a certain hindrance for those, who want to visit the centre. There is no UNHCR representative in Estonia. The UNHCR regional Stockholm office covers also Estonia which makes it very difficult for the asylum seeker to contact someone from the UNHCR. There is internet connection in the Illuka reception centre.

C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

The director of the reception centre makes a decision to limit access to asylum seekers by taking into account the current situation. Therefore for security reasons access might be limited. It has not happened yet.

Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

The new law provides possibility to check the condition of health of an applicant in case it is necessary and to take examples of DNA.²⁵ No special provisions concerning a HIV test. Medical screening is organised by the reception centre in cases of complaints. It is free to asylum applicants. HIV test is not mandatory.

B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Normally, the person that requires a medical aid is transported to the nearest doctor or sometimes the doctor visits the Reception Centre. Also the ambulance can be called. However, it is necessary to mention that the mentioned earlier internal regulation of the Reception Centre provides the right to medical aid only in emergency cases. The fact, what is an emergency case, is not specified.

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?²⁶

Usually the asylum seekers go to see the doctor. There are agreements with therapists in Jõhvi (Jõhvi is the closest city to the reception centre about 50 km from the Centre) and Tallinn who are contacted in case of emergency. Medical treatment is free for the asylum seeker.

Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

One year after submitting the asylum application the asylum seeker gets a right to work. Before that he or she is not allowed to work. The permission to work does not grant a chance to work.

B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

²⁵ §15 of the Act

²⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

No experience yet as the law was enforced on 1st July 2006. The Act §10 section 4 says that the applicant has a right to work if the CMB after one year of submitting the application has not made a decision. Under the Alien Act all foreigners who want to work in Estonia must ask for the work permit so probably this clause will apply also for the asylum seekers who get the right to work.

- C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?)**

No, there are no specific rules designed for the asylum seekers. They will be probably treated as any other third country national who wants to work in Estonia. Under these general rules there are no restrictions on time limit, they are the same for Estonian citizens. Bearing in mind that the Reception Centre is in the remote area 220 km away from the capital and 50 km away from the nearest city and there is bus connection to the nearest village where the Reception Centre situates only three times per week and the unemployment is the highest in the region it is very unlikely that the asylum seekers who are obliged to live in that Reception Centre can find a job.

- D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEA citizens and legally third-country nationals on the other?**

Asylum seekers will be in the same position with the third country nationals. EU and EEA citizens are in priority. Only when there is no Estonian citizen or EU, EEA citizen to take the employment position the asylum seekers and third country nationals have a chance to apply for the position.

- E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)**

No access before 12 months as it depends from the right to access the labour market. The access to vocational training is not regulated by the Act. It is of course disputable if vocational training is considered as work or part of education. As it is not clearly regulated and we do not have yet practice in that, it is in fact difficult to answer. It might be reasonable to offer vocational training through NGO-s and then it should be seen as part of education. The Labour Office offers vocational training only to those who have a right to work, and in order to be able to compete in the labour market, need additional training.

- F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?**

Yes, they are more generous. Before the directive, asylum seekers did not have a possibility to work at all.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes. Asylum seekers have to contribute to their reception when they work. They do not get the financial benefits. Normally, asylum seekers are accommodated at the special reception centre and they receive money allowance only to cover small personal needs. According to the new law § 11 (4), the applicant will be obliged to cover all expenses including for accommodation in case he or she possess enough financial means.

Asylum seekers have to cover the cost of:

- 1) accommodation;
- 2) supply of foodstuffs or provision of food, supply of essential clothing, other necessities and toiletries, and supply of money for urgent small expenses within the limits set out in clause 5) of §36 of the Act to aliens residing in the reception centre and to aliens residing outside the reception centre on the basis of § 34 (2) 3) or §62 (2) 3) thereto;
- 3) medical examinations;
- 4) essential translation services and Estonian language instruction

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. **A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

Only minors have special provisions in the Act no other categories of persons with special needs are considered in the directive. Art 17 of the directive is not regulated by the Act. It can be disputed that the Victims Support Act regulates also the special needs of asylum seekers.

B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

As there are no special provisions regarding different categories of persons with special needs (except unaccompanied minors) the art 13 §2 and 16 §4 and 17 of the directive are not respected.

C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

No provisions, which means they are not identified and there are no rules regarding this. § 6 of the Act give a definition of an accompanied minor. During the first interview or at the time of applying for asylum, the age will be identified. When there is a dispute about the age, the

medical expertise will be done to the person who claims to be a minor, but the doubt about his or her age has risen. In practice the special needs of asylum applicants are tried to be identified during the first interview among the asylum applicant and social worker.

D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

There are no provisions about the persons with special needs. In principal all asylum applicants have access to necessary medical assistance. Victims of torture and violence can seek benefit from the Victim Support Act if they are identified. There is no procedure how to identify the victims.

There have been no cases of persons who are mentally ill. There have been some doubts of some persons being mentally ill, but they were not identified.

Problems that rise from stress are treated by the normal doctor. The director of the reception centre can arrange psychologist to the reception centre or if the doctor prescribes the special treatment, the specialist will be visited. But as there is no practice in this area it is not possible to answer the question about the treatment practice in the area of mental health care.

Q.31. About minors:

A. Till which age are asylum seekers considered to be minor?

Minor is a person under age of 18. An unaccompanied minor alien is an alien under age of 18, who arrives or has arrived in Estonia without a parent or a guardian or who is left without parental care while residing in Estonia.

An unaccompanied minor can independently perform the acts specified in this Act, if he or she shall likely become an adult before the decision of the Citizenship and Migration Board with regard to the asylum application or if the unaccompanied minor is or has been married.

B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?

All children at the age of 7-17 are obliged to go to school in Estonia. This applies also to asylum seekers. There is no schooling (except Estonian language courses) provided in the accommodation centre. The schooling is similar to the conditions for nationals. Asylum seeker child who is living in the accommodation centre has to go to the closest school which is Illuka primary school. (This is the current practice)

Art 8 from the Education Act (EV Haridusseadus), ²⁷ states the obligation to go to school for all the children who are between age 7-17. Schooling can be done at home. All foreigners and stateless children are obliged to go to school, except the children of representatives of the foreign states.

Art § 36 of the Education Act give a right for foreigners according to the Estonian legislation and the international contracts.

²⁷ [RT 1992, 12, 192](#)

Elementary school is for the forms 1-4 (age 7-10) and primary school forms 4-9. Every child who is under 17 years old is obliged to go to school. This obligation applies to all residents in Estonia including non-citizens and stateless persons and can be extended to asylum seekers. After age of 17 a child can decide if he or she wants to study in the secondary school (10-12 form) or go to work or start to study in technical college, art school, etc. After that time there is no obligation to go to school. But at the same time there is no obligation of the state too to provide schooling. Estonia does not have a practice yet with elder children. The children who went to school were placed in the primary school.

Estonia has Russian speaking and Estonian speaking schools.

The obligation to go to school is regulated by Primary School and Gymnasium Act (Põhikooli ja Gümnaasiumi seadus)²⁸

Article 18 of the Education Act states that parents can choose the school, where to put the child, if there is free space in the school.

Article 19 of the Education Act says that a school is obliged to provide learning possibilities to every child who is obliged to go to school and who lives in its service providing territory. The territory will be located by the local municipality.

No there is no bus to Illuka School every day but the usual practice was that the children were taken to the school by the reception centre. The reception centre was responsible for organizing the transportation.

The secondary school is farther, in the closest city called Jõhvi, which is about 50 km from the Reception Centre.

There are no specific rules for schooling created for asylum seekers in the relevant laws. The schooling laws talk about foreigners and therefore should be applied also for the asylum seekers.

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

It is difficult to say, there are no special provisions in the law how quickly the schooling should be organised. In practice the children will go to school as soon as possible.

D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

The specific education is not regulated by the law. Probably the teachers have to give extra lessons that are decided by the teacher. Under the principle of equal treatment, if a child (national or legally residing) needs extra guidance the guidance should be provided, must apply also to asylum seekers. Estonian language classes are provided also in the Reception Centre if there are enough asylum seekers interested.

E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

²⁸ [RT I 1993, 63, 892](#)

Minors are accommodated with their parents or with the person responsible of them. According to the law the best interests of the child principle have to be respected. What is the best interest of the child is not specified.

F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

There are no provisions for minors with special needs in the new Act. Minors can also benefit from the Child Protection Act and Victims Support Act.

There have been no cases of minors who are mentally ill. Problems that rise from stress are treated by the normal doctor. The director of the reception centre can arrange psychologist to the reception centre or if the doctor prescribes the special treatment the specialist will be visited. But as there is no practice in this area it is not possible to answer the question about the treatment practice in the area of mental health care.

G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

§17 of the Act regulate the representation of an unaccompanied minor. In asylum procedure an applicant, who is an unaccompanied minor with restricted active legal capacity, shall be represented by the guardian, the guardianship authority, the head of the reception centre or a person authorized by the director of reception centre, unless otherwise provided by the law.

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

§35 of the Act regulate the placement of an unaccompanied minor. An applicant who is an unaccompanied minor shall be placed in the reception centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her.

An applicant who is an unaccompanied minor may be placed with an adult relative or to social care family, if the host is appropriate for taking care of a minor.

In placing an applicant who is an unaccompanied minor in the reception centre, social welfare institution, to an adult relative or social care family, the rights and interests of the minor shall be taken into consideration above all. Unaccompanied minor's sisters and brothers shall not be separated, if possible.

In cases specified in clause (8) of section 17²⁹ of this Act, the applicant who is an unaccompanied minor may be placed in the initial reception centre for the time of the examination. There is currently no initial reception centre in Estonia.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The Child Protection Act art 67 is regulating tracing of an accompanied minor who is a refugee. It is the obligation of a social centre to check and find the possibilities for return. There are no special provisions about confidentiality of information regarding minors, that is forwarded to the country of origin. But the general rule of the confidentiality³⁰ regarding the data of the asylum seeker should be followed.

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be “as short as possible” (see article 14, §8)?

These provisions are not regulated. Art 14 §8 of the directive is not regulated in Estonia.

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

§35 (1) of the Act prescribes that an accompanied minor can be placed either at the Reception Centre, or to the orphanage. There are no specific detention conditions for persons with special needs.

B. Non availability of reception conditions in certain areas

Taking into account the small size of Estonia, it is very unlikely that there could be any problems with transporting asylum seekers from one area to another. All the asylum seekers have to stay in the Illuka Reception Centre as this is the only Centre. There are no special conditions for persons with special needs. There is one family room in the Reception Centre.

C. Temporarily exhaustion of normal housing capacities

In the case of mass influx or temporarily exhaustion of normal housing capacities, alternative accommodation places are rented or bought. No specific rules designed in the law.

D. The asylum seeker is confined to a border post

²⁹ If the Citizenship and Migration Board has reasoned doubts as to the correctness of the information provided by the applicant in respect of his or her age, with the consent of the applicant or his or her representative the applicant's age can be established by medical examination.

³⁰ §13

No specific rules. According to the §16 of the Act the border guard authority shall inform the corresponding official of the Citizenship and Migration Board without delay of the submission of an application for asylum and where necessary, involve a competent official of the Citizenship and Migration Board in the performance of the acts specified in clause 1) of §15 of the Act.

If a basis for refusal to deny an application for asylum provided in clauses 1) and 2) of § 20³¹ and clauses 1) and 2) of §21³² of the Act becomes evident, the alien shall be refused entry with the approval of the Citizenship and Migration Board, and he or she shall be sent back from the border without delay, informing him or her of the reasons for refusal.

The confinement is regulated by the §32 of the Act only in the initial reception centre and in the premises of CMB. According to the §32 an applicant who has submitted an application during his or her stay in the country is required to stay in the initial reception centre but not for longer than forty-eight hours.

An applicant may temporarily stay in the office of the Citizenship and Migration Board, if necessary for the performance of acts for the asylum proceedings.

With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre after the expiry of the term specified in subsection (1) of this section in the following cases:

- 1) the identity of the applicant has not been not ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;
- 2) for establishing circumstances relevant to the asylum proceedings if the applicant does not co-operate in establishment of the circumstances or hinders the establishment thereof;
- 3) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
- 4) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre;
- 5) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided by this Act;
- 6) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

³¹ Application for asylum shall be deemed to be clearly unfounded if:

- 1) another country can be considered the initial country for asylum, i.e. asylum or other protection has been accorded to the applicant in another country, and such protection is still accessible to the applicant;
- 2) the country of origin of the applicant can be considered as a safe country;

³² Asylum proceedings are terminated by a decision to reject the application for asylum if:

- 1) another country is responsible for the review of the application for asylum according to an international agreement or regulation 343/2003/EC of the Council of the European Union that specifies the criteria and mechanisms for designating the member state that shall be responsible for the process of reviewing an application for asylum submitted in any member state by a third country national (EU 050, 25.02.2003, p. 1–10);
- 2) the applicant has arrived to Estonia through a country which can be considered as a safe country;

4) The Citizenship and Migration Board shall submit a petition to an administrative court in order to obtain the permission specified in clause (3) of this section.

5) An applicant who is required to stay at the initial reception centre is permitted to leave the centre with the written permission of the Citizenship and Migration Board, or in order to receive emergency medical care.

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

In mass influx cases the people can be placed in different accommodation places. Article 62 (1) of the new law sets out that the person who has received a temporary protection is obliged to live in the territory of Reception Centre or at the place decided by the Ministry of Social Affairs.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

A. In which cases or circumstances and for which reasons³³ (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

§32 and §33 of the Act regulates the detention of the asylum seeker. The law states that there is an initial reception centre, but in reality it so far does not exist.

The new registration centre was opened on 26th April 2006. It is allowed to keep a person there for 48 hours. The registration centre is not an initial reception centre but people can be kept there over weekend until they are transported to Illuka Reception Centre.

Police, border guard and CMB can keep the asylum seeker in their premises for 48 hours. The extension of the detention can be asked from the Administrative Court judge. The judge can give a permission to keep the asylum seeker in detention up to 2 months. After that a new court order can be issued.

Here are the functions of the initial reception centre:

An applicant who has submitted an asylum application can be required to stay in the initial reception centre but not for longer than forty-eight hours after the submission of asylum application.

With the permission of an administrative court judge, an applicant may be required to stay at the initial reception centre in the following cases:

³³ Article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that “*Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum*” is or not respected (even if has not yet to be transposed).

- 1) the identity of the applicant has not been not ascertained, including in the case where the applicant does not co-operate in the identification or hinders identification;
- 2) for establishing circumstances relevant to the asylum proceedings;
- 3) there is good reason to believe that the applicant has committed a serious criminal offence in a foreign state;
- 4) the applicant has repeatedly or seriously violated the internal procedure rules of the reception centre;
- 5) the applicant fails to comply with the surveillance measures applied with respect to him or her, or the applicant fails to perform other duties provided by this Act;
- 6) the applicant's stay in the initial reception centre is necessary in the interests of the protection of national security and public order.

The Citizenship and Migration Board shall submit an appeal to an administrative court to extend the detention of an asylum seeker.

An applicant who is required to stay at the initial reception centre is permitted to leave the centre with the written permission of the Citizenship and Migration Board, or in order to receive emergency medical care.

§33 of the Act states that an applicant who has submitted the application for asylum during his or her stay at the expulsion centre, in prison or in jail, or in the course of execution of the expulsion procedure, shall not be placed in the initial reception centre but shall remain at the expulsion centre, in prison or in jail until the termination of the asylum proceedings. If an alien had submitted the application for asylum during his or her stay at the expulsion centre or in prison and was released from prison or jail, he or she shall be sent to the reception centre.

The articles specified in the Act shall not apply to an applicant with regard to whom a criminal procedure has been commenced, if it is in conflict with the principles of the Code of Criminal Procedure.

The reason that a person applied for asylum is not a reason to keep a person in detention. But there can be other offences like crossing the border illegally, that is punishable.

B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?

Yes, see previous answer. The asylum seekers may be held (there is currently no initial reception centre although the provisions are in the law) at the premises of the Border Guard or Citizenship and Migration Board, Illuka Reception centre, deportation centre, jail, prison. The applicant can be detained in jail or at places mentioned before then he or she is transferred to the Illuka Reception Centre or to the deportation centre (in case of manifestly ill-founded application) if the immediate deportation is not possible to conduct within 48 hours.

C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

No. Such surveillance measures are prescribed by the Article 29 of the Act; however, it does not seem that these rules are designed to replace detention of the applicant. There are no financial guarantee provisions regulations. The obligation to report is for every asylum seeker who does not stay in the Reception Centre. Article 29 sets the surveillance measures, which are following:

(1) For the effective and efficient, simple and rapid conduct of asylum proceedings, the Citizenship and Migration Board has the right to apply the following surveillance measures with respect to applicants:

1) residing in a determined place of residence;

2) appearing for registration at the Citizenship and Migration Board at prescribed intervals;

3) notifying the Citizenship and Migration Board of his or her absence from the place of residence for a period longer than three days.

(2) Officials of the Citizenship and Migration Board and police officers have the right to verify the compliance of applicants with the surveillance measures at any time.

(3) An applicant shall be informed in writing of the imposition of surveillance measures.

It is difficult to say if these measures replace the detention as there is no practice at the moment the report was drafted.

D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The competent authority is Citizen and Migration Board (CMB), border guard office and in few cases police. CMB and border guards can make a first decision to detain a person for 48 hours after that there should be a court decision.

E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Usually not more than 48 hours, otherwise with the court order the person can be detained longer.

F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Asylum seekers can be kept in expulsion centre or in case of criminal offence together with criminals in the prison. There is no initial reception centre in Estonia yet. The law said that the person can be detained at the initial detention centre or at the premises of the CMB or border

point upon lodging application for the refugee status on the period of 48 hours.³⁴ The 48 hours term can be prolonged by the administrative court.

The person who has submitted the asylum application being in the deportation centre, prison or jail is obliged to stay in the same place until the end of asylum proceedings.³⁵

The deportation centre is managed by the CMB (Citizen and Migration Board). Prisons are managed by the Prison Board (Vanglate Amet). Borders are controlled by the Border Guard Authority.

G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Generally yes, the permission from the director of the centre has to be granted to UNHCR or NGOs.

H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *“Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review”* respected (even if it has not yet to be transposed)?

He can appeal to the court, which is the Administrative Court. As the person can be detained after 48 hours only with the court permission it seems that the provision is respected. The new legislative Act does not cover the directive on asylum procedures of 1 December 2005.

I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

There is no practice yet. §32 of the Act states that asylum seekers who are detained should have similar rights with asylum seekers who are not detained.

The Citizenship and Migration Board shall, arrange assistance to an applicant who may temporarily stay in the office of the Citizenship and Migration Board, if necessary for the performance of acts of the asylum proceedings. Following is provided by CMB:

- temporary accommodation;
- emergency care and medical examinations
- information regarding their rights and duties;
- provision of other essential services.
- essential necessities and toiletries, and food allowance.

According to the law translation is not mentioned in the list of services. One can argue that under the art 12 the Act the initial reception centre and the reception centre shall, as

³⁴ §15(6) and §32(1) of the Act

³⁵ §33(1) of the Act

necessary, arrange essential translation services to applicants during asylum or temporary proceedings.

J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “*Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention*” respected?).

The answer depends from the place of detention. To give an answer to that question there is a need to analyze all internal regulations of such places, which is impossible in the present case because of time limits. In general one can say that the regulations are not in accordance with the requirements of the directive. The law writes about the initial reception centre that is supposed to be a detention centre. In reality this centre does not exist. The asylum seekers are kept in the CMB or Border Guard premises or in prison, jail, at the border, when the detention is needed. Look at the previous answer to the question I.

K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

No. There are no provisions for people with special needs in the Act. Unaccompanied minors are an exception.

L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Probably yes. The provisions are not regulated. Asylum seekers who are minors can be detained in the initial reception centre in cases the Citizenship and Migration Board has reasonable doubt to believe that the asylum seeker is lying about his/her age. In that case with the consent of the asylum seeker or his/her representative, medical examining can be done to specify the age of the applicant. The best interests of the child have to be respected during the whole asylum procedure. In reality, there is no initial reception centre.

M. In particular is article 10 regarding access to education of minors respected in those places?

It is not explicitly written in the new Act on Granting International Protection to Aliens but the other legislation (Obligation to Attend School Act) obliges all children from the age 7-16 to study in the school. The same applies to asylum seekers who are about that age.

N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

In September 2006 no asylum seeker is detained. There are altogether 5 asylum applications in proceedings in different instances in September 2006.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Estonian accommodation centre is centralised. Estonia has only one centre that is under supervision of the Ministry of Social Affairs.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)³⁶

Estonia has one public accommodation centre which is financed from the state budget. In addition there is a registration centre located in Tallinn which is administered by the Citizenship and Migration Board. It is used for conducting asylum proceedings but if necessary the asylum applicants can be accommodated in the registration centre as well. (As the reception centre is located far from Tallinn).

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?³⁷

Estonia has one public accommodation centre, Illuka Reception Centre, www.vastuvotukeskus.ee

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no plan to distribute asylum seekers all over the territory. There is only one reception centre in Estonia, which is quite far from the capital in the remote area near the Russian border with limited access of public transportation.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?³⁸

³⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

³⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

NGOs are not consulted in the coordination of reception conditions; the director of the reception centre participates in development of reception conditions.

When a new law is designed NGO-s are asked to provide their comments. There is no central body representing all the actors involved in reception conditions in Estonia.

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

Ministry of Social Affairs has to control the Reception Centre and Ministry of Interior has to control the CMB. But there are no special provisions in the law, how the control should be done.

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,...) to be respected in particular in accommodation centres?³⁹

General rules for housing are respected when asylum seekers are accommodated no special rules for the Reception Centre. The asylum seekers have an access to internet. There is no creative room for children. There is one TV. The toilet and shower, washing machine, also the kitchen is for public use. The one family room has private shower and toilet. There are no books, newspapers that the asylum seekers could read. The closest library is far. The rooms are designed mostly for 4 persons. There is a phone that can be used by asylum seekers.

C. **How is this system of guidance, control and monitoring of reception conditions organised?**⁴⁰

Ministry of Social Affairs and the Chancellor of Justice are making regular checks to the Reception Centre, but it is not specified in the new law but is a general rule. The Chancellor of Justice gives a report, at its yearly report, about the visit and monitoring activities of the reception conditions and reception centre. According to the Ministry of Interior the report of the Ministry of Social Affairs is also public.

D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?⁴¹

³⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

³⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴⁰ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The monitoring by the Ministry of Social Affairs must be done twice per year. Also the Chancellor of Justice⁴² is visiting once per year the Reception Centre. The report of the Legal Chancellor is public. According to the Ministry of Interior the reports produced by the Ministry of Social Affairs are also public.

The reports done by the Legal Chancellor are done after the visit and the reports can be found in the year report of the Legal Chancellor. For example Legal Chancellor has approached Estonian Refugee Council (ERC) with letters asking if the Council know some problems with the reception of asylum seekers in the Reception Centres. And ERC has given feedback, when there have been some known infringements. The Ministry of Social Affairs has not mentioned in its answers that they write a report after the monitoring procedure.

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

In 2005 there were 11 asylum applications in Estonia at the end of the year 2005, eight cases were under consideration that means reception conditions applied to 8 persons at the end of the year 2005. In September 2006 only five applications were on the procedure.

B. What is the total budget of reception conditions in euro for the last year for which figures are available?⁴³

According to the Estonian European Refugee Fund plan for the years 2005-2007, planned salary of CMB decision makers (five people) in 2005 was 1 076 010 EEK = 68798 EUR . Expenses on translators in 2005 for nine months was 21 600 EEK = 1381 EUR. Costs of the reception centre in 2005 are 1 186 265 EEK = 75848 EUR. There are also projects managed by NGOs and financed by EU funds that support the reception conditions improvements.⁴⁴

C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?⁴⁵

No direct figures available, but if we add above mentions costs and divide them by number of asylum seekers then the amount per asylum seeker is 207 625 EEK or 13 275 EUR. In reality the sum is bigger as also finances that NGOs use should be added.

D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The costs for the reception of asylum seekers are financed from the state budget and from EU funds.

⁴² www.oiguskantsler.ee

⁴³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴⁴ http://www.sisemin.gov.ee/atp/failid/2005_2007_a_programm.rtf ; 12.06.2006

⁴⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- E. **Is article 24 § 2 of the directive following which “*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*” respected?**⁴⁶

At the moment it seems that the resources are sufficient as the number of asylum seekers is very low.

- Q.41. A. What is the total number of persons working for reception conditions?⁴⁷

In CMB there are 5 persons who make decisions on asylum claims. In the Reception Centre there work 2 persons and in the Ministry of Social Affairs there is one person responsible. Also couple of people in the Ministry of Interior and in the Expulsion Centre are involved.

- B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**⁴⁸

People working in the Reception Centre have received training from UNHCR, NGOs and internal training organised by the Ministry. The problem is that the people working for the reception centre have limited language skills including English. The topic of torture victims should get more attention and also the officials must be trained in that.

There are very few cases where gender issue has raised also there has been only one unaccompanied minor case in Estonia. The CMB officials though have received training on separated children.

- C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?⁴⁹

Yes, all the people working with asylum seekers are obliged to keep in secret the personal data of the asylum seekers. The new Act also states the confidentiality requirement. Confidentiality has to be respected.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

- Q.42. Specify if there are or not big problems with the translation of the that the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

⁴⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

⁴⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Yes, there is a problem with translation of the directive. Art 21 of the directive is translated not correctly into Estonian language. The article itself relates to the appeals procedure.

The Estonian version of the directive is following: *“Member states shall assure that the negative decisions relating to the granting benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers can be appealed according to the internal rules of the state. At least in the last instance, the possibility of an appeal to the court or to apply through the court for the reviewing of the case should be granted”*.

This means that the court will not review the case, but only grants a chance, that the case will be reviewed by the CMB once again. Here is the difference between the Estonian and English translation of the directive. The English version states that the judicial body should review the case and not the same institution that rejected the asylum application.

The English version of the Art 21 of the directive says: *“Member states shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted.”*

In the Estonian system the Citizen and Migration Board has to review once again the negative decision made by itself when the court makes a decision that the CMB first decision was wrong.

The Administrative Court, when the cases are brought before it, cannot grant asylum, but can only decide that the asylum decision was incorrect and ask CMB to make a new decision. So, the judicial body under Estonian system does not review the asylum case on the substance. It can be claimed that taking a case to the court does not have suspensive effect.

It is contradictory to the principle of right to appeal before the judicial body and is contradictory to the means of the directive.

In some other places the Estonian version of the directive comparing to the English version, is disputable, whether the translation is correct or not.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...)?

Yes, Estonia had a Refugee Act that was based on the Refugee Convention. Only refugees under the convention could get asylum. Before joining EU there were no proper rules for the subsidiary protection or for the temporary protection.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?

There was legal act before (Refugees Act) and there is new now (Act on Granting International Protection to Aliens). The legal rules applicable to reception conditions became

more precise with the adoption of the transposition norms. Some new elements were also added that were not before like the possibility for employment after 12 months. At the same time there are still elements missing in the new law, that should be transposed from the directive i.e. conditions for the people with special needs. There are still some regulations under preparation that will complement the Act. Also the appeal on the negative decisions does not have suspensive effect.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Yes, the directive implied important changes in national law

1. Explanations of safe country and safe third country, country of origin is in the law
2. Asylum seeker can work after 12 months
3. New concept of temporary protection is introduced
4. New concept of subsidiary protection is introduced
5. When the application is placed on the border the border guards have to contact CMB for advice
6. Eurodac system is introduced
7. Dublin system introduced
8. Special provisions when the expulsion is not allowed
9. etc

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There has been only small debate in the parliament. No debate in the newspapers or media.

Q.47. **Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

The law became more favourable. Additional protection possibilities were introduced for example subsidiary protection, temporary protection. The asylum seekers can work after one year, they couldn't before. But there are no more favourable provisions than the provisions of the directive.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?⁵⁰

The weaknesses of the reception conditions are the location of Iluka reception centre for asylum seekers (far from the capital, where asylum proceedings are conducted) and that there is no initial reception centre (detention centre) in reality.

The fact that the reception centre is so far, brings up the costs for transportation, also limits the access to meet the lawyers and integrate them to the society.

The strengths are the small size of Estonia and good co-operation between different authorities.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States⁵¹

The lawyers used to stay with the applicant at the interview with the CMB. Unfortunately the practice is not any more used as there is no capacity of an NGO providing legal counselling.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

The directive in Estonian language is different than the English version. Art 21 of the directive is translated in the way as it would fit to the Estonian system.

Minors

An applicant who is an unaccompanied minor shall be placed in the Reception Centre or a social welfare institution for the time of the asylum proceedings, and welfare services appropriate to the age of the applicant shall be guaranteed to him or her. Article 19 of the Council Directive 2003/9/EC requires also the necessary representation of unaccompanied minors, as far as possible, keeping siblings together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. All of the above mentioned rights of unaccompanied minors are **not regulated** in Act on Granting International Protection to Aliens, The terms concerning the presentation and accommodation of the unaccompanied minor is regulated in Child Protection Act (§ 63) and in the Act on Granting International Protection to Aliens (§ 17 and § 35). The Act on Granting International Protection § 35 (3) stipulates also the principle of the rights and interests of the minor being taken into consideration above all and an obligation, where possible, not to separate unaccompanied minors who are brothers and sisters. Child Protection Act § 31 stipulates general principle of treatment of child that includes taking into account of his or her character, age and sex. That principle applies also when dealing with minors in asylum procedures. The obligation to trace the member of his or her family is regulated in Child Protection Act § 67.

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⁵¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Another ground that should be reconsidered or should be regulated more precisely is § 20 (18) of Act on Granting International Protection to Aliens, “in case minor’s parents’ application has been rejected”. It can not be forgotten that the best interests of the minor should always come first. In reality the asylum application could be connected to the interests or protection needs of the minor and the parent might lack grounds for asylum, but at the same time the child could be entitled to subsidiary protection. Minor’s application can not automatically depend on his or her parents’ application. Since the grounds for obviously ungrounded applications are arguable, the accelerated procedure should be as well. Accelerated procedure has been widely criticized in Finland it is said that the legal safeguards are not sufficient considering the interests of asylum seekers.⁵²

Ungrounded applications

Article 20 (17) of the Act says that obviously ungrounded application is submitted by a person who threatens security and/or public order or he has expelled from Estonia for the above mentioned reasons. Threat to peace, security and public order is a reason not to give asylum and reject the application but the Aliens Act treats it as basis for obviously ungrounded application.

Appeals

An alien who appeals the decision of the Migration Board has during court procedures the same rights and obligations as an asylum seeker if the court has stopped the compulsory execution of precept to leave.⁵³ The execution of precept to leave Estonia should be stopped automatically when the application has been appealed, otherwise country loses legal certainty that it doesn’t violate the principle of *non-refoulement*. It is possible that the court satisfies the complaint and protection must be provided. If this person has been deported meantime, Estonia infringes the obligation to provide international protection to certain groups of people.

Part 3 of chapter 2 of Aliens Act is about residence and work permits, according to article 38, a residence permit for a refugee shall be issued with a period of validity for three years and for the person in need of subsidiary protection for one year. In Refugees Act the period was up to two years and subsidiary protection was not regulated at all.⁵⁴ The Migration Board may extend a residence permit if the circumstances due to which the residence permit was issued have not ceased to exist and no circumstance exists which constitutes the basis for revocation thereof.⁵⁵ The decision to refuse issue of a residence permit and a precept to leave Estonia issued thereby may be contested with an Administrative Court within ten days after the date of adoption of the decision. Ten days is too short period of time to appeal. Unfortunately the authors of the Aliens Act have not taken into account the recommendations made by Estonian NGOs dealing with refugees in legal matters.⁵⁶ It was strongly suggested that the time limit would be thirty days, like in Finland which has been an example in creating this particular Act.

⁵² The Refugee Advice Center in Finland, Asylum Procedure Diagrams, available at <http://www.pakolaisneuvonta.fi/?lid=54&lang=eng> last visited 19.05.2006

⁵³ Aliens Act, Art.3 (2)

⁵⁴ Refugees Act, , RT I 97, 19, 306 Art.15; 18.02.1997

⁵⁵ Välismaalasele Rahvusvahelise Kaitse Andmise Seadus, RTI, 05.01.2006, 2, 3 Art.39 available at <https://www.riigiteataja.ee/ert/act.jsp?id=974633>; 16.05.2006

⁵⁶ Recommendation made by Estonian Refugee Council and LICHR

In its second and third report on Estonia⁵⁷ ECRI expressed its concern on the wide authorities of border guards who are authorized to review and reject asylum claims. Border guards' decisions to reject asylum claims result the asylum seekers' immediate removal from Estonian territory without the possibility of lodging an appeal. Aliens Act provides that border guards only involve the Migration Board in the actual review of the claim when it is "necessary".⁵⁸ However, the Act does not determine their powers therefore it would be important to create a regulation to limit and specify the powers of border guards. Migration Board should review all the applications and make sure that the applicant will be heard and he or she would be able to file an appeal before an appeals court. Furthermore, border guards lack special training in this specific field and guidelines i.e. how to determine safe third country.⁵⁹

§ 16 of the Act give specifications of acts when application for asylum is submitted at the border. According to that article the border guard authority shall immediately inform the corresponding official of the Citizenship and Migration Board of the submission of an application for asylum and where necessary, involve a competent official of the Citizenship and Migration Board in the procedure. It is not clearly stated that in case of nonadmission to the asylum procedure at the border, the Border Guards make a decision together with CMB. The grounds for rejecting application on the border are limited with grounds ratified in the article 16 (2) of the new law.

Location of the reception centre

The location of the reception centre in Illuka is about 220 km from Tallinn. The nearest town is located 50 km from the centre where also the nearest school is. The reception centre has problems with finding specially trained teachers, to teach children and Estonian language. The Migration Board, Administrative Court and all the other necessary procedures must be taken care of in Tallinn. Area, where the reception centre is located has mainly Russian speaking population and most probably by staying there and communicating with local people, one learns Russian instead of Estonian language, which might lead to integration problems and possibly not finding work in Estonia. Due to these facts the work of this centre is time demanding, inefficient and expensive and in the future, when building such reception centres, better location should be taken into consideration.

⁵⁷ ECRI, Third Report on Estonia 2006 available at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/Estonia/Estonia_CBC_3.asp#TopOfPage ;09.05.2006 and ECRI, Second Report on Estonia 2002 available at http://www.coe.int/t/e/human_rights/ecri/5-archives/1-ecri%27s_work/5-CBC_Second_reports/PDF_CBC2-Estonia.pdf ; 09.05.2006

⁵⁸ Välismaalasele Rahvusvahelise Kaitse Andmise Seadus, RTI, 05.01.2006, 2, 3 Art.16 (1) available at <https://www.riigiteataja.ee/ert/act.jsp?id=974633> ;16.05.2006

⁵⁹ Fact based on interview with a lawyer dealing with refugee issues in Estonia