

**THE USE OF DETENTION AND ALTERNATIVES  
TO DETENTION IN LITHUANIA**

**2014**



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## Summary

**Context.** In Lithuania, on average 3,000 aliens per year violate the procedure for entry, presence, transit and departure of aliens from the Republic of Lithuania. Approximately 260 aliens are detained annually for more than 48 hours for illegal entry and stay in the Republic of Lithuania. Under court decisions, alternatives to detention are provided on average to 38 aliens per year.

**Grounds for detention of aliens.** Based on the interpretation issued by the Constitutional Court of the Republic of Lithuania in its ruling of 5 February 1999, a person's detention is an *ultima ratio* and can be applied only in the cases where the objectives specified by the law cannot be achieved by other means. Chapter VII of the Law of the Republic of Lithuania on the Legal Status of Aliens (the 'Law') regulates detention of aliens. The Law provides for an exhaustive list of grounds for detention.<sup>1</sup>

**Detention of vulnerable persons.** Vulnerable persons and families with minor aliens may be detained only in an exceptional case, taking into account the best interests of a child and vulnerable persons. In practice, such cases occur highly rarely.

**Detention of asylum seekers.** The asylum seekers who had illegally entered the country and had lodged an application for asylum were not subject to detention before 1 February 2012, because there was no legal basis. Such asylum seekers used to be provided with accommodation at the Foreigners' Registration Centre without restricting their freedom of movement. Approximately 70 per cent of the asylum seekers used to depart subsequently in violation of the internal rules of the Centre and not come back thus abusing the asylum procedure. On 1 February 2012, Article 113 was supplemented with paragraph 2, according to which the Supreme Administrative Court of Lithuania adopted a practice that an asylum seeker may be detained if he hinders the adoption or implementation of the appropriate decision or may abscond in order to avoid return, expulsion or transfer, etc.<sup>2</sup> On 24 October 2013, Article 113 of the Law was supplemented with paragraph 4, which stipulates in detail grounds for detention of asylum seekers.<sup>3</sup>

**Assessment of the appropriateness of detention.** An alien may be detained solely on the grounds provided for in Article 113 of the Law. The alien may be detained for a period not exceeding 48 hours by a police officer or an officer of another law enforcement institution. For a period exceeding 48 hours, the alien may be detained only by a court's decision. When adopting such a decision, the court examines each case individually and takes the decision with regard to a specific situation and all the relevant circumstances.

**Detention facilities and length of time in detention.** In Lithuania, there is one body for the detention of aliens in breach of provisions of the Law, that is, the Foreigners' Registration Centre. The Centre has two separate buildings: a closed building, which accommodates the aliens who are detained under a court's

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<sup>1</sup> Article 113(1): An alien may be detained on the following grounds: 1) in order to prevent the alien from entering the Republic of Lithuania without a permit; 2) if the alien has unlawfully entered or stays in the Republic of Lithuania; 3) when it is attempted to return the alien who has been refused entry into the Republic of Lithuania to the country from which he arrived; 4) when the alien is suspected of using forged documents; 5) when a decision is made to expel the alien from the Republic of Lithuania or another state; 6) in order to prevent the spread of dangerous and particularly dangerous contagious diseases; 7) when the alien's stay in the Republic of Lithuania constitutes a threat to national security, public order or public health.

<sup>2</sup> Article 113(2): Where the issues of an alien's return to the foreign country, his expulsion from the Republic of Lithuania, an obligation to depart from the Republic of Lithuania or transfer of an asylum seeker to another EU Member State responsible for examination of an asylum application are dealt with, the alien may be detained only in the case where the detention is necessary for the adoption or implementation of the appropriate decision (where the alien hinders the adoption or implementation of the decision or may abscond to avoid return, expulsion, or transfer, etc.).

<sup>3</sup> Article 113(4): An asylum seeker may be detained on grounds on illegal entry to the Republic of Lithuania or illegal stay therein only for the purposes of establishing and/or verifying his identity/nationality and/or identifying the reasons for lodging the application for asylum, also where his application for asylum is based on the grounds clearly unrelated to the threat of persecution in the country of origin or is based on fraud or where the asylum seeker has not been granted temporary territorial asylum and there are grounds to believe that he may abscond in order to avoid return to a foreign country or expulsion from the Republic of Lithuania.

decision, and an open building – the aliens whose freedom of movement is not restricted. An alien may not be detained for more than 6 months, except for the cases when he refuses to cooperate with a view to his expulsion from the Republic of Lithuania (refuses to provide data about himself, provides misleading information, etc.) or where the documents necessary to execute the expulsion of such an alien are not received. In such cases, the detention period may be extended for a further period of up to 12 months. In 2013, the length of time in detention in respect of aliens at the Foreigners' Registration Centre was on average 38 days.

**Alternatives to detention and provision of such alternatives.** A decision on the provision of alternatives to detention is adopted by a court. Case law shows that alternatives to detention<sup>4</sup> are provided only when the conditions provided for by the Law are met: 1) an alien's identity has been established, 2) he constitutes no threat to national security and public order, 3) he provides assistance to the court in determining his legal status in the Republic of Lithuania, as well as other circumstances. Unaccompanied minors are not detained in Lithuania and are subject to an alternative to detention, namely, entrusting the guardianship of an alien to a relevant social agency. Asylum seekers who have illegally entered Lithuania may, under a court's decision, be provided another alternative to detention, namely, accommodation at the Foreigners' Registration Centre without restricting the freedom of movement. In respect of other aliens, alternatives to detention are usually prescribed by the court if the aliens meet the above conditions and hold adequate means of subsistence or have social or family connections with Lithuania, etc.

**Appeal against decisions.** An alien may appeal against a decision on detention or provision of alternatives to detention in accordance with the procedure laid down by the Law on Administrative Proceedings within 14 days from the adoption of the decision. The court must examine the alien's appeal not later than within 10 days from the acceptance of the appeal.

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<sup>4</sup> Alternatives to detention are listed in Article 115 of the Law: 1) the alien is required to regularly at the fixed time appear at the appropriate territorial police agency; 2) the alien is required, by means of communication, to inform the appropriate territorial police agency at the fixed time about his whereabouts; 3) entrusting the guardianship of an unaccompanied minor alien to a relevant social agency (applicable exclusively to unaccompanied minors); 4) entrusting the guardianship of an alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien lawfully residing in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and support the alien; 5) accommodating the alien at the Foreigners' Registration Centre without restricting his freedom of movement (applicable exclusively to asylum seekers).

## Section 1: Categories of third-country nationals that can be detained, national provisions and grounds for detention

**Q1. Please complete the table below with regard to the categories of third-country nationals that can be detained in your Member State. Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q2) after the table.**

Grounds for detention of aliens are provided for in Article 113 of the Law. The list of the grounds for detention is exhaustive.

### **Article 113. Grounds for Detention of an Alien**

1. An alien who is not a citizen of an EU Member State, his family member or another person exercising the right of free movement of persons under legal acts of the European Union may be detained on the following grounds:
  - 1) in order to prevent the alien from entering the Republic of Lithuania without a permit;
  - 2) if the alien has unlawfully entered or stays in the Republic of Lithuania;
  - 3) when it is attempted to return the alien who has been refused entry into the Republic of Lithuania to the country from which he arrived;
  - 4) when the alien is suspected of using forged documents;
  - 5) when a decision is made to expel the alien from the Republic of Lithuania or another state to which Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals applies;
  - 6) in order to prevent the spread of dangerous and particularly dangerous contagious diseases;
  - 7) when the alien's stay in the Republic of Lithuania constitutes a threat to national security, public order or public health.
2. Where the issues of an alien's return to the foreign country, his expulsion from the Republic of Lithuania, an obligation to depart from the Republic of Lithuania or transfer of an asylum seeker to another EU Member State responsible for examination of an asylum application are dealt with, the alien may be detained only in the case where the detention is necessary for the adoption or implementation of the appropriate decision (where the alien hinders the adoption or implementation of the decision, may abscond to avoid return, expulsion or transfer, etc.).
3. ....
4. An asylum seeker may be detained on the ground referred to in point 2 of paragraph 1 of this Article only for the purposes of establishing and/or verifying his identity/nationality and/or identifying the reasons for lodging the application for asylum, also where his application for asylum is based on the grounds clearly unrelated to the threat of persecution in the country of origin or is based on fraud or where the asylum seeker has not been granted temporary territorial asylum and there are grounds to believe that he may abscond in order to avoid return to a foreign country or expulsion from the Republic of Lithuania.

It needs to be noted that Article 113(2) of the Law entered into force on 1 February 2012, and with a view to reducing the number of aliens abusing the asylum procedure a law supplementing Article 113 of the Law with paragraph 4 was adopted and entered into force on 24 October 2013.

Categories of third-country nationals	Can third-country nationals under this category be detained? (Yes/No)	If yes, is the possibility to detain laid down in legislation? (Yes/No)	If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines	Please list the <u>grounds</u> for detention for each category of migrant that can be detained in your (Member) State. Is there an <u>exhaustive list</u> of grounds outlined in your national framework?
<b>Applicants for international protection in ordinary procedures</b>	Yes	Article 113 of the Law	N/A	Article 113(1), (2) and (4) of the Law
<b>Applicants for international protection in fast-track (accelerated) procedures</b>	Yes	Article 113 of the Law	N/A	Article 113(1), (2) and (4) of the Law
<b>Applicants for international protection subject to Dublin procedures</b>	Yes	Article 113 of the Law	N/A	Article 113(1), (2) and (4) of the Law
<b>Rejected applicants for international protection</b>	Yes	Article 113 of the Law	N/A	Article 113(1), (2) and (4) of the Law
<b>Rejected family reunification applicants</b>	Depending on the legal status, persons may be detained if their presence in the country is illegal and if they hinder the adoption or implementation of the appropriate decision or may abscond in order to avoid return, expulsion or transfer, etc.	Article 113 of the Law	N/A	Article 113(1) and (2) of the Law
<b>Other rejected applicants for residence permits on</b>	Depending on the legal status, persons may be	Article 113 of the Law	N/A	Article 113(1) and (2) of the Law



<p><b><i>basis other than family reunification (Please provide details)</i></b></p>	<p>detained if their presence in the country is illegal and if they hinder the adoption or implementation of the appropriate decision or may abscond in order to avoid return, expulsion or transfer, etc.</p>			
<p><b><i>Persons detained at the border to prevent illegal entry (e.g. airport transit zone) who have not applied for international protection</i></b></p>	<p>Yes</p>	<p>Article 113 of the Law</p>	<p>N/A</p>	<p>Article 113(1)(3) of the Law</p>
<p><b><i>Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision</i></b></p>	<p>Yes</p>	<p>Article 113 of the Law</p>	<p>N/A</p>	<p>Article 113(1)(2) of the Law</p>
<p><b><i>Persons who have been issued a return decision</i></b></p>	<p>Yes</p>	<p>Article 113 of the Law</p>	<p>N/A</p>	<p>Article 113(1)(5) and Article 113(2) of the Law</p>
<p><b><i>Other categories of third-country nationals (Please specify the categories in your answer)</i></b></p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

**Q2. Is it possible, within the national legal framework of your (Member) State, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.**

Article 2(18<sup>(1)</sup>) of the Law presents the definition of a vulnerable person: 'Vulnerable person means a minor, a disabled person or a person who is over 75 years of age, a pregnant woman, a single father or mother raising minor children or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

According to Article 114(3) of the Law, vulnerable persons and families with minor aliens may be detained only in an extreme case, taking into consideration the best interests of the child and vulnerable persons.

**Q3. Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals.<sup>5</sup>**

Under Article 114(4) of the Law, an alien may not be detained for a period exceeding 6 months, except for cases where he refuses to cooperate with a view to his expulsion from the Republic of Lithuania (refuses to provide data about himself, provides misleading information, etc.) or where the necessary documents to execute the expulsion of such an alien from the territory of the state are not received. In such cases, the detention period may be extended for a further period of up to 12 months.

According to Article 118(1) of the Law, upon the disappearance of the grounds for the alien's detention, the alien is entitled to, whereas the institution which initiated the alien's detention must immediately apply to the local court of the location of the alien's residence with an application for review of the decision to detain the alien. It has been proposed to supplement this provision<sup>6</sup> imposing on the institution under the authority of which the detained alien is held an obligation to apply to the court also in the cases when, for legal or other objective reasons, there is no reasonable prospect of the alien's expulsion from the Republic of Lithuania any longer.

According to Article 119(2) of the Law, if the alien's detention period expires, he must be immediately released from the place of detention.

If an alien cannot be expelled from the Republic of Lithuania (the foreign country to which the alien can be expelled refuses to accept him; the alien is in need of basic medical aid, the necessity of which is confirmed by an consulting panel of a health care institution; the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.<sup>7</sup>)), he is issued a temporary residence permit, as provided for in Article 40(1)(8) of the Law, until the grounds on which the alien cannot be expelled disappear. In 2013, eight temporary residence permits were issued on this ground.

Article 129 of the Law also stipulates that an unaccompanied minor alien who is found to be illegally present on the territory of the Republic of Lithuania or illegally resides in it may be returned only provided that he is duly taken care of in the foreign country to which he is returned, taking into consideration his needs, age and level of independence. If such an unaccompanied minor alien cannot be returned to the country of origin or any other country, he must be granted the right to reside in the Republic of Lithuania.

Article 130 of the Law provides for other cases when expulsion or return is not possible: i) where an alien is to be expelled or returned to a country where his life or freedom is under threat or where he may be subjected to persecution on the grounds of race, religion, citizenship, membership of a certain social group or political opinion or to a country from whence he may later be expelled to such country; ii) where there are serious grounds to believe that in that country the alien will be tortured, subjected to cruel, inhuman or

<sup>5</sup> According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

<sup>6</sup> A draft Law Amending Law of the Republic of Lithuania on the Legal Status of Aliens No IX-2206 is currently being considered by the Government of the Republic of Lithuania and will be submitted to the Seimas.

<sup>7</sup> Article 128(2)(2), (3) and (4) of the Law.



degrading treatment or punishment; iii) if he has been granted the reflection period in accordance with the procedure established by the Government of the Republic of Lithuania, during which he, as a present or former victim of offences linked to human trafficking, has to make a decision on cooperation with the pre-trial investigation body or the court.

## Section 2: Assessment procedures and criteria for the placement of third-country nationals in detention

**Q1. Please indicate whether an individual assessment procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 2 (Table Q1). Yes/No.**

**If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.**

**If individual assessment procedures are not used, please indicate the mechanism used to determine the appropriateness of detention e.g. are all individuals within a particular category of third country national automatically placed in detention?**

In Lithuania, the appropriateness of detention is based on Article 113 of the Law (see Section 2, Q1), which lists the grounds for detention. The list of the grounds for detention is exhaustive.

According to Article 114(1) of the Law, an alien may be detained by the police or any other law enforcement institution officer for a period not exceeding 48 hours. No methodology for individual assessment has been developed, however when detaining a person, an officer obtains the alien's explanation, draws up a detention report and evaluates all the relevant circumstances, such as possession of a document confirming the person's identify, means of subsistence, existence of a place of residence, social or family connections in the Republic of Lithuania.

An alien may be detained for a period exceeding 48 hours only by a court's decision. In its decision, the court evaluates each case individually and takes the decision based on all facts provided.

**Q2. Where individual assessment procedures are used, and specific criteria exist to help the competent authorities decide whether particular grounds for detention apply, please indicate the legal basis on which these individual assessment procedures are exercised (for example legislation, soft law/guidelines).**

Detention is regulated by the Law on the Legal Status of Aliens, the case law regarding detention under this Law has also been developed.

According to the interpretation of the Constitutional Court of the Republic of Lithuania,<sup>8</sup> the principle of lawfulness of detention as entrenched in Part 2 of Article 20 of the Constitution of the Republic of Lithuania means that no person may be deprived of his freedom otherwise than on the grounds and according to the procedures which have been established by law. The freedom of an individual is one of the main inherent rights of the individual, and its restriction is possible only when this is necessary and unavoidable and is done strictly in compliance with the requirements of the law. This means that the detention of the person is an *ultima ratio* and can be applied only in the cases where the objectives specified by the law cannot be achieved by other means.

The Supreme Administrative Court has ruled<sup>9</sup> that the grounds for detention of aliens are inseparable from detention objectives, i.e., an alien's freedom of movement in the Republic of Lithuania may be restricted only if this is necessary to ensure national security and public order, protect public health or morals, prevent crime or safeguard the rights and freedoms of others.

**Q3. Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?**

A decision on an alien's detention for more than 48 hours is taken by a court considering all facts. The alien's participation in court hearing when examining the case to detain the alien or to provide to him an alternative to detention is necessary. During examination of the case to detain the alien or to provide to

<sup>8</sup> Ruling of the Constitutional Court of the Republic of Lithuania of 5 February 1999

<sup>9</sup> Decision of the Supreme Administrative Court of Lithuania of 14 December 2006 in Case No N-17-2752/2006

him the alternative to detention, he is entitled to legal aid guaranteed by the State of Lithuania.

**Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. (Yes/No) If yes, please describe the vulnerability assessment procedure used.**

According to Article 114(3) of the Law, vulnerable persons and families with minor aliens may be detained only in an extreme case, taking into consideration the best interests of the child and vulnerable persons. The officer who has detained an alien directly communicates with the alien in the course of proceedings and determines whether he is a vulnerable person.

**Q5. Please provide more detailed information on the criteria / indicators used to decide whether particular grounds for detention apply in individual cases. EMN NCPs are asked to answer this question by listing the criteria / indicators that are used to determine the circumstances in which the following grounds for detention, permitted in EU law, apply. However, if the grounds for detention are not applicable in your (Member) State, EMN NCPs may identify the criteria/indicators that are used to determine the circumstances in which other grounds for detention apply.**

Article 113(1) of the Law provides an exhaustive list of grounds for detention. Aliens are most often detained under Article 113(1)(2), 'if the alien has unlawfully entered or stays in the Republic of Lithuania', and paragraph 2 of this Article<sup>10</sup> or Article 113(4)<sup>11</sup> (this part of the Law applies exclusively to asylum seekers). It should be noted that until 1 February 2012, detention did not apply to the asylum seekers who had illegally entered the country and lodged an application for asylum, because there was no legal ground. Under a decision of the Migration Department, the asylum seekers were accommodated at the Foreigners' Registration Centre without restricting their freedom of movement.

According to data of the Foreigners' Registration Centre, in 2010-2012 approximately 70 per cent of asylum seekers used to leave the Centre and not return. It follows that the asylum seekers abused the asylum procedure. Since the entry into force, on 1 February 2012, of a law supplementing Article 113 with paragraph 2, the Supreme Administrative Court of Lithuania<sup>12</sup> has developed a practice according to which asylum seekers may be detained based on this provision of the Law. The court has stated that in the Republic of Lithuania, the issue of granting asylum or refusal of asylum to an alien or his non-expulsion or expulsion from the Republic of Lithuania is decided during a single administrative procedure (this is in compliance with the provisions of Article 6(6) of Directive 2008/115/EC allowing Member States to adopt a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act). It follows that Article 113(2)<sup>13</sup> of the Law may be applied at any stage of this procedure, provided there exist the necessary preconditions, that is, an alien hinders the adoption or implementation of the appropriate decision, may abscond in order to avoid expulsion, etc. The panel of judges has noted that the wording of Article 113(2) of the Law shows that this provision of the Law has a broader scope than merely the return of illegally staying third-country nationals. This provision applies to all aliens. On 24 October 2013, there entered into force the amendments to the Law which, *inter alia*, supplement Article 113 with paragraph 4 and stipulate: 'an asylum seeker may be detained on grounds of illegal entry to the Republic of Lithuania or illegal stay therein only for the purposes of establishing and/or verifying his identity/nationality and/or identifying the reasons for lodging the application for asylum, also where his application for asylum is based on the grounds clearly unrelated to the threat of persecution in the country of

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<sup>10</sup> Where the issues of an alien's return to the foreign country, his expulsion from the Republic of Lithuania, an obligation to depart from the Republic of Lithuania or transfer of an asylum seeker to another EU Member State responsible for examination of an asylum application are dealt with, the alien may be detained only in the case where the detention is necessary for the adoption or implementation of the appropriate decision (where the alien hinders the adoption or implementation of the decision or may abscond to avoid return, expulsion, or transfer, etc.).

<sup>11</sup> An asylum seeker may be detained on grounds of illegal entry to the Republic of Lithuania or illegal stay therein only for the purposes of establishing and/or verifying his identity/nationality and/or identifying the reasons for lodging the application for asylum, also where his application for asylum is based on the grounds clearly unrelated to the threat of persecution in the country of origin or is based on fraud or where the asylum seeker has not been granted temporary territorial asylum and there are grounds to believe that he may abscond in order to avoid return to a foreign country or expulsion from the Republic of Lithuania.

<sup>12</sup> Decision of the Supreme Administrative Court of Lithuania of 31 October 2012 in Case No N-575-1297-12.

<sup>13</sup> Article 113(2): Where the issues of an alien's return to the foreign country, his expulsion from the Republic of Lithuania, an obligation to depart from the Republic of Lithuania or transfer of an asylum seeker to another EU Member State responsible for examination of an asylum application are dealt with, the alien may be detained only in the case where the detention is necessary for the adoption or implementation of the appropriate decision (where the alien hinders the adoption or implementation of the decision, may abscond to avoid return, expulsion, or transfer, etc.).

origin or is based on fraud or where the asylum seeker has not been granted temporary territorial asylum and there are grounds to believe that he may abscond in order to avoid return to a foreign country or expulsion from the Republic of Lithuania’.

**a) Ground 1: If there is a risk of absconding**

According to Article 113(2) (where the issues of an alien’s return to a foreign country, his expulsion, an obligation to depart from the Republic of Lithuania or transfer of an asylum seeker under the Dublin Regulation are dealt with) and Article 113(4) of the Law (in order to establish and/or verify the identity/nationality of the alien and/or to identify the reasons for lodging his application for asylum, also where his application is manifestly unfounded), an alien may be detained if there is a risk of absconding.

Currently, Lithuanian legal acts do not define criteria for determining a risk of absconding, however courts, when making a decision to detain an alien, take into account all circumstances and evaluate all criteria comprehensively (whether the alien may hinder the adoption or implementation of the decision, may abscond in order to avoid expulsion or there is a ground to believe that he abuses the asylum procedure). In each specific case, the courts take into account all the facts: whether a person’s identity has been established, whether the alien provides assistance to authorities in determining his legal status, whether he has left Lithuania without an authorisation pending a final decision, whether the alien's explanations contradict each other, whether he has been returned from another Member State under the Dublin II Regulation, whether his presence constitutes a threat to security and public order, etc.

Moreover, Draft Law No 14-580(3)<sup>14</sup> Amending the Law on the Legal Status of Aliens, which is currently being considered by the Government of the Republic of Lithuania, proposes to stipulate in the Law an exhaustive list of circumstances which must be considered when determining whether an alien may abscond:

- 1) the alien does not have a document confirming the person’s identity and fails to cooperate in establishing his identity and/or nationality (refuses to provide data on himself, provides false information, etc.);
- 2) the alien does not have a place of residence in the Republic of Lithuania or is absent from (does not reside at) the indicated address of the place of residence;
- 3) the alien does not have family relationships with the persons residing in the Republic of Lithuania or social, economic or other connections with the Republic of Lithuania;
- 4) the alien does not possess means of subsistence for the duration of his stay in the Republic of Lithuania;
- 5) the alien fails, within the specified time limit, to comply with the obligation to depart from the Republic of Lithuania or does not voluntarily depart from the Republic of Lithuania within the time limit laid down in the decision to return him to a foreign state;
- 6) the alien does not implement an alternative to detention as provided by the court;
- 7) the alien provided with accommodation at the Foreigners’ Registration Centre without restricting his freedom of movement violates the procedure for temporary leave from the Foreigners' Registration Centre;
- 8) the alien, attempting to escape criminal liability for unlawful state border-crossing, lodges an application for the granting of asylum over the period of pre-trial investigation initiated against him;
- 9) the alien’s presence in the Republic of Lithuania may constitute a threat to public order.

**b) Ground 2: If the third-country national avoids or hampers the preparation of a return or removal process**

According to Article 113(2) of the Law (where the issues of an alien’s return, expulsion, an obligation to depart or transfer of an asylum seeker under the Dublin Regulation are dealt with), an alien may be detained if the alien hinders the adoption or implementation of the appropriate decision.

As mentioned above, in making a decision to detain an alien courts take into account all case-specific circumstances and assess them comprehensively (whether an alien hinders the adoption or implementation of the decision, refuses to provide data on himself, provides false information or otherwise fails to cooperate in establishing his identity, misleads).

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<sup>14</sup> Consideration of this Draft Law is included in the Work Programme of the 2014 spring session of the Seimas of the Republic of Lithuania.

**c) Ground 3: If required in order to protect national security or public order**

According to Article 113(1)(7) of the Law, an alien may be detained when the alien's stay in the Republic of Lithuania constitutes a threat to national security or public order. In this case, the information as provided on the person by law enforcement institutions is considered.

**d) Ground 4: Please indicate any other ground(s) and the respective criteria/indicators considered in the assessment**

According to the grounds laid down in Article 113(1) of the Law, an alien may be detained i) in order to prevent an alien from entering the Republic of Lithuania without a permit; ii) when it is attempted to return the alien who has been refused entry into the Republic of Lithuania to the country from which he arrived; iii) when the alien is suspected of using forged documents; iv) when a decision is made to expel the alien from the Republic of Lithuania or another state to which Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals applies; v) in order to prevent the spread of dangerous and particularly dangerous contagious diseases.

**Q6. Is the possibility to provide alternatives to detention systematically considered when assessing whether to place a person in detention in your (Member) State?**

Based on the interpretation of the Constitutional Court of the Republic of Lithuania, a person's detention is an *ultima ratio* and can be applied only in the cases where the objectives specified by the law cannot be achieved by other means. In other words, this means that if there is a possibility of providing alternatives to detention, the provision of such measures is necessary to secure the rights of the person.<sup>15</sup>

Article 115 of the Law provides for alternatives to detention. They may be provided only by a court having regard to the fact that an alien's identity has been established, he constitutes no threat to national security and public order, provides assistance to the court in determining his legal status in the Republic of Lithuania and other circumstances. As the case law shows, when deciding on the provision of an alternative to detention courts also take into account the following criteria: whether the alien has a legal source of income, whether there are persons to whom he can be transferred and entrusted for the purposes of supervision and support, whether he has social connections, whether he has a place of residence in Lithuania. An examination of the case law allows for the conclusion that aliens often do not meet these conditions, hence alternatives to detention are provided rarely.

It must be noted that according to Article 115(2)(3) of the Law, unaccompanied minor aliens are *always* provided an alternative to detention, namely, entrusting a minor alien to a relevant social agency. Asylum seekers *may* be provided another alternative to detention – accommodating at the Foreigners' Registration Centre without restricting the freedom of movement.

**Q7. Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on the placement of a third-country national in detention.**

An alien may be detained for a period not exceeding 48 hours by the police or another law enforcement institution and for a period exceeding 48 hours – only by a court.

**Q8. Please indicate whether judicial authorities are involved in the decision to place a third-country national in detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)**

In Lithuania, a decision to detain an alien for more than 48 hours is made by the court in each individual case having regard to all the facts.

According to Article 117 of the Law, an alien is entitled to appeal to the Supreme Administrative Court of Lithuania, according to the procedure established by the Law on Administrative Proceedings, against a

<sup>15</sup> Ruling of the Constitutional Court of the Republic of Lithuania of 5 February 1999

decision of a district court to detain him or to extend the detention period or to impose alternatives to detention within 14 days from the delivery of the decision. The appeal may be submitted through the Foreigners' Registration Centre. The Foreigners' Registration Centre forwards the alien's appeal to the Supreme Administrative Court of Lithuania.

The Supreme Administrative Court of Lithuania considers the alien's appeal according to the procedure established by the Law on Administrative Proceedings and adopts a decision within 10 days from the date of acceptance of the appeal.

**Q9. Please identify any challenges associated with the implementation of existing assessment procedures in your (Member) State.**

Presently, the legal acts of the Republic of Lithuania do not stipulate any criteria for assessing the risk of absconding. It is appropriate to stipulate such criteria by a law<sup>16</sup> in order to ensure greater clarity of assessment of the risk of absconding and its compliance with legal norms.

**Q10. Please identify any good practices in relation to the implementation of assessment procedures (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)**

Individual assessment, in deciding on an alien's detention or provision of an alternative to detention on the grounds and under the terms and conditions specified by the Law, is performed by the court. Judicial activities in Lithuania are based on the individual assessment of the totality of facts and decision-making on a case-by-case basis.

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<sup>16</sup> Draft Law Amending Law of the Republic of Lithuania on the Legal Status of Aliens No IX-2206, which proposes to stipulate in the Law the circumstances to be considered when determining whether there is a ground for absconding.



### Section 3: Types of detention facilities and conditions of detention

**Q1. Are there specialised immigration detention facilities in your (Member) State, which are not prisons? (Yes/No) If yes, please indicate how many exist and how they are distributed across the territory of your (Member) State.**

Yes. The Foreigners' Registration Centre (closed building) is a specialised and the only facility in Lithuania designed to accommodate detainees who are illegally present in Lithuania or have illegally entered the country. In addition, the Foreigners' Registration Centre (open building) provides accommodation to asylum seekers during the examination of their asylum applications without restricting their freedom of movement. Unaccompanied minor aliens are accommodated at the Refugees Reception Centre.

**Q2. Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances (e.g. persons in return proceedings, applicants for international protection, persons who represent a security risk, etc.)? (Yes/No). If yes, please provide a brief overview of the different types of immigration detention facilities.**

There are no different types of detention facilities in Lithuania, however, there are two buildings at the Foreigners' Registration Centre. One is intended for accommodation of aliens in detention, while the other provides accommodation to asylum seekers.

**Q3. Which authorities/organisations are responsible for the day-to-day running of the specialised immigration detention facilities in your (Member) State?**

The Foreigners' Registration Centre is state-owned. The rights and duties of the owner of the Centre are exercised by the State Border Guard Service, which coordinates and controls the activities of the Centre. There are two buildings at the Foreigners' Registration Centre. One is intended for accommodation of aliens in detention, while the other provides accommodation to asylum seekers.

**Q4. Please describe any measures taken by your (Member) State to deal with situations where the number of third country nationals to be placed in detention exceeds the number of places available in the detention facilities.**

Over the past decade, there have not been any such cases.

**Q5. Are third-country nationals detained in prisons in your (Member) State? (Yes/No) If yes, under which circumstances?**

Solely for the crimes provided for in the Criminal Code of the Republic of Lithuania

**Q6. If third-country nationals are detained in prisons in your (Member) State, are they held separately from general prisoners? If yes, please provide information on the mechanisms to separate third-country nationals under immigration detention from general prisoners?**

Not applicable

**Q7. Please provide the following information about the conditions of third-nationals who have been placed in an immigration detention facility in your (Member) State: (Please indicate if the facilities in question are prisons or specialised immigration detention facilities).**

Aliens who have illegally entered Lithuania or are illegally present in it may be detained only by a court's decision at the Foreigners' Registration Centre.

Conditions of detention	Statistics and/or comments	
	Specialised immigration detention facilities	Detention Facilities
Please provide any statistics on the average available surface area per detainee (in square meters)	Average area per detainee is not less than 5 sq. m per person (according to the Lithuanian Hygiene Norm HN 61:2005 "Foreigners' Registration Centre. Hygiene Standards and Rules", approved by Minister of Health Order No V-836 of 28 October 2005).	-
Please provide any statistics on the	Depending on the size of the room, in	-

average number of detainees placed in one room per detention facility	compliance with the Lithuanian Hygiene Norm HN 61:2005.	
Are families accommodated in separate facilities?	Yes	-
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?	No The best interests of a child are always taken into account.	-
Are single women separated from single men?	Yes, women and men are provided with accommodation in separate floors.	-
Are unaccompanied minors separated from adults?	Yes, unaccompanied minors are provided with accommodation at the Refugees Reception Centre in Rukla.	-
Do detainees have access to outdoor space? If yes, how often?	Yes Aliens in detention at the Foreigners' Registration Centre have the possibility to stay in the open air twice a day.	-
Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?	Yes, subject to permission by the head of the Foreigners' Registration Centre, aliens are allowed to meet in the territory of the Centre the persons visiting them (family members, lawyers, interpreters, representatives of non-governmental organisations, representatives of various religious confessions).	-
Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way?	Yes Detainees are allowed to use a landline telephone, which is the detainees' dormitory, and can also receive and send correspondence by mail (delivered in person). Aliens are not allowed to use mobile phones.	-
Are education programmes provided (e.g. school courses for minors and language classes for adults)?	Minor aliens are entitled, in accordance with the procedure laid down by the Ministry of Education and Science of the Republic of Lithuania, to attend school and to participate on the invitation of international or public organisations in the events organised by the Republic of Lithuania outside the Centre.	-
Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?	The Foreigners' Registration Centre organises holiday events and theme parties, quizzes, board games, cultural awareness activities for ethnic groups, and daily social skills development sessions. Aliens have the possibility to watch TV, read the press and books. There is a hall with two sets of sports equipment for aliens to do physical exercise. Teachers of music, art, and physical training work at the Centre.	-
Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?	Persons cannot leave the facility. Persons' movements are restricted to a certain part of the facility.	-
Are detainees entitled to legal advice / assistance? If yes, is it free of charge?	At the time of detention, persons are entitled to receive state-guaranteed legal aid. The persons are entitled to hire a lawyer at their own expense.	-
Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?	At the time of detention, persons are entitled to free translation / interpretation services.	-
Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?	Medical aid is provided at the Foreigners' Registration Centre. A medical examination is performed in a general practitioner's office. The general practitioner's office provides out-patient primary health care services, it	-

	receives patients two days a week, and general practice care is provided daily on working days. In the cases of immediate necessity, an ambulance is called. If a person needs to refer to other professionals, the general practitioner issues an appropriate referral, and the alien is taken to other professionals accompanied by a nurse.	
Are there special arrangements for persons belonging to vulnerable groups? Please describe	A psychologist evaluates the psycho-emotional state of the persons provided with accommodation at the Foreigners' Registration Centre, performs psychological diagnosis, identifies the vulnerable persons who may belong to the category of persons experiencing trauma / subjected to torture, provides individual psychological counselling, organises group psychological and art therapy sessions, such as music, art therapy, play therapy sessions for children.	-
Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe	If a psychologist identifies such a person, he is isolated from others and is referred to medical treatment facilities.	-

## Section 4: Availability and practical organisation of alternatives to detention

**Q1. Please indicate whether any alternatives to detention for third-country nationals are available in your (Member) State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.**

<b>Alternatives to detention</b>	<b>Yes/ No (If yes, please provide a short description)</b>
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	Yes. An alien is required to regularly at the fixed time appear at the appropriate territorial police agency;
Obligation to surrender a passport or a travel document	No
Residence requirements (e.g. residing at a particular address)	No
Release on bail (with or without sureties) <i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	No
Electronic monitoring (e.g. tagging)	No
Guarantor requirements <i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	Yes. Entrusting the guardianship of an alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien lawfully residing in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and support the alien;
Release to care worker or under a care plan	No
Community management programme	No
Other alternative measure available in your (Member) State. Please specify.	1) the alien is required, by means of communication, to inform the appropriate territorial police agency at the fixed time about his whereabouts; 2) entrusting the guardianship of an unaccompanied minor alien to a relevant social agency; 3) accommodating the alien at the Foreigners' Registration Centre without restricting his freedom of movement (applicable only to asylum seekers);

**Q2. For each of the alternatives to detention that are available in your (Member) State, please indicate the categories of third country nationals that may be provided an alternative to detention, making use of the list provided below and adding any additional categories as applicable. If there are variations in the practical organisation of any of the alternatives to detention provided to different categories of third country national, please indicate this is the case and briefly illustrate the variations.**

<b>Article 115(2) of the Law on the Legal Status of Aliens</b>
<p>Measures alternative to detention shall be as follows:</p> <ol style="list-style-type: none"> <li>1) the alien is required to regularly at the fixed time appear at the appropriate territorial police agency;</li> <li>2) the alien is required to, by means of communication, at the fixed time inform the appropriate territorial police agency about his whereabouts;</li> <li>3) entrusting the guardianship of an unaccompanied minor alien to a relevant social agency;</li> <li>4) entrusting the guardianship of an alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien lawfully residing in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and support the alien;</li> <li>5) accommodating the alien at the Foreigners' Registration Centre without restricting his freedom of movement.</li> </ol>

- Applicants for international protection in ordinary procedures - 1, 2, 4, 5. In practice, alternative 5 is applied most often.
- Applicants for international protection in fast-track (accelerated) procedures - 1, 2, 4, 5;
- Applicants for international protection subject to Dublin procedures - 1, 2, 4, 5;
- Rejected applicants for international protection - 1, 2, 4, 5;
- Rejected family reunification applicants - 1, 2, 4;
- Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision) - 1, 2, 4;
- Persons who have been issued a return decision - 1, 2, 4;
- Other categories of third-country nationals:
  - Unaccompanied minors - 3;
  - Vulnerable persons (such as minors, families with very young children, pregnant women and persons with special needs) - 1, 2, 4;

**Q3. For each of the alternatives to detention that are available in your (Member) State, please indicate the legal basis on which they may be granted to particular categories of third country nationals (for example legislation, soft law/guidelines, other).**

Article 115 of the Law.

**Q4. For each of the alternatives to detention that are available in your (Member) State, please indicate the authorities/organisations responsible for (a) deciding and (b) administering the alternative. Please indicate in particular whether the responsible organisation is a non-governmental organisation.**

It is courts alone that, having regard to the fact that an alien's identity has been established, he constitutes no threat to national security and public order, provides assistance to the court in determining his legal status in the Republic of Lithuania and other circumstances, may decide not to detain the alien and to provide to him an alternative to detention.

The following institutions are responsible for the implementation of alternatives to detention:

- 1) the alien is required to regularly at the fixed time appear at the appropriate territorial police agency – the police.
- 2) the alien is required to, by means of communication, at the fixed time inform the appropriate territorial police agency about his whereabouts – the police.
- 3) entrusting the guardianship of an unaccompanied minor alien to a relevant social agency – the Refugees Reception Centre under the Ministry of Social Security and Labour of the Republic of Lithuania.
- 4) entrusting the guardianship of an alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien lawfully residing in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and support the alien – an institution on the recommendation of which the alien is provided the alternative to detention, that is, the police or another law enforcement institution.
- 5) accommodating the alien at the Foreigners' Registration Centre without restricting his freedom of movement – the Foreigners' Registration Centre of the State Border Guard Service.

**Q5. For each of the alternatives to detention that are available in your (Member) State, please provide information on any consequences if the third-country national does not follow the conditions of the alternative to detention.**

If the alternatives to detention as designated by the court are not implemented, a territorial police agency or another law enforcement institution refers to the court recommending the alien's detention.

**Q6. Please indicate any challenges associated with the implementation of the alternatives to detention in your (Member) State. (based on existing studies/evaluations or information received from competent authorities)**

In practice, alternatives to detention are systematically provided to unaccompanied minors. As regards the implementation of this alternative, it has not been always verified whether a person is a minor, the alien's oral testimony alone has been relied upon. In most cases, such aliens have departed from a social agency thus abusing this alternative to detention.

In respect of other aliens, alternatives to detention are usually granted only if they have adequate means of subsistence, social or family connections with Lithuania. An examination of the case law allows for the conclusion that aliens often do not meet these conditions, hence the alternative to detention is provided rarely.

***Q7. Please provide any examples of good practices regarding the implementation of the alternatives to detention in your (Member) State. Please specify the source (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)***

Taking into consideration the best interests of a child. All unaccompanied minor aliens are provided an alternative to detention, namely, entrusting the guardianship of an unaccompanied minor alien to a relevant social agency.



## **Section 5: Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention**

**Q1. In Section 2, Q1, you have identified the grounds on which detention can be authorised for particular categories of third-country national. In what circumstances can those grounds be displaced in favour of an alternative to detention in your (Member) State? Please provide answers in relation to each of the relevant categories of third-country national. If there is a separate set of grounds for providing third-country nationals an alternative to detention in your (Member) State, please indicate this is the case.**

The court, having regard to the fact that an alien's identity has been established, he constitutes no threat to national security and public order, provides assistance to the court in determining his legal status in the Republic of Lithuania and other circumstances, may decide not to detain the alien and to provide to him an alternative to detention.

It should be noted that all unaccompanied minor aliens are provided an alternative to detention, namely, entrusting the guardianship of an unaccompanied minor alien to a relevant social agency.

In the case of asylum seekers, the court evaluates all facts and decides in each individual case on the provision of an alternative to detention, namely, accommodating at the Foreigners' Registration Centre without restriction of the freedom of movement.

As regards other aliens, alternatives to detention are usually provided only if they have adequate means of subsistence, social or family connections with Lithuania.

**Q2. Which other considerations are made before deciding whether to provide the third-country national concerned an alternative to detention, e.g. considerations regarding the availability of alternatives, the cost of alternatives, and vulnerabilities of the third-country national?**

According to Article 115 of the Law, when taking a decision not to detain an alien and to provide an alternative to detention, the court takes account of the circumstances which are mentioned in Q1 of this Section, as well as other circumstances, for example, whether the alien has a legal source of income, whether there are persons to whom he can be entrusted for the purpose of supervision, whether he has a place of residence in Lithuania, etc.

**Q3. Please indicate whether an individual assessment procedure is used to determine whether the grounds on which detention can be authorised can be displaced in favour an alternative to detention. Yes/No. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.**

In Lithuania, it is courts alone that may decide on the provision of an alternative to detention. In each case, the court examines a specific situation and evaluates all facts.

**Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. Yes/No. If yes, please describe the vulnerability assessment procedure used.**

In Lithuania, it is courts alone that may decide on the provision of an alternative to detention. In each case, the court examines a specific situation and evaluates facts, including those regarding a person's vulnerability.

**Q5. Are assessment procedures for providing alternatives to detention conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have already completed a period in detention?**

The court, having regard to the fact that an alien's identity has been established, he constitutes no threat to national security and public order, provides assistance to the court in determining his legal status in the Republic of Lithuania and other circumstances, may decide not to detain the alien and to provide to him an alternative to detention, regardless of whether the alien has been detained or the detention period has expired.

**Q6. Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on alternatives to detention**

It is the court alone, having regard to the fact that an alien's identity has been established, he constitutes no threat to national security and public order, provides assistance to the court in determining his legal status in the Republic of Lithuania and other circumstances, that may decide not to detain the alien and to provide to him an alternative to detention. In each case, the court examines a specific situation and evaluates all facts.

**Q7. Please indicate whether judicial authorities are involved in the decision to provide an alternative to detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)**

A motion to detain an alien for more than 48 hours or to provide an alternative to detention is filed with a district court by the alien's location in the territory of the Republic of Lithuania by a police officer or an officer of another law enforcement institution within 48 hours from the moment of detention of the alien. The court, having regard to the fact that the alien's identity has been established, he constitutes no threat to national security and public order, assists the court in determining his legal status in the Republic of Lithuania and other circumstances, may decide not to detain the alien and to provide to him an alternative to detention. The court's decision to detain the alien or to provide alternatives to detention enters into force from the moment of its adoption.

The alien may appeal against the decision of the district court to detain him or to extend his period of detention or to provide alternatives to detention to the Supreme Administrative Court of Lithuania Law in accordance with the procedure laid down by the Law on Administrative Proceedings within 14 days. The Supreme Administrative Court of Lithuania examines the alien's appeal in accordance with the procedure laid down by the Law on Administrative Proceedings and takes a relevant decision no later than within 10 days from the date of acceptance of the appeal.

## Section 6: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures

### 6.1. Effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions

#### 6.1.1. Effectiveness in reaching decisions on applications for international protection

**Q1. Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in your (Member) State considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (for example, by affecting the time it takes to decide on international protection status). Yes/No.**

**If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.**

No, no such evaluation has been carried out in Lithuania to determine the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection. Article 81 of the Law lays down time limits for examining asylum applications as to substance, which are not affected by detention of an alien or provision of an alternative to detention.

**Q2. Please provide any statistics that might be available in your (Member) State on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention. Please provide the statistics for the latest year(s) available (for example "2013" or "2011-2013") and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).**

**Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.**

**Where no information is available, please indicate "No information" and briefly state why no information is available.**

**Where it is not applicable, please indicate "Not applicable" and briefly state why.**

Applicable year(s)	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time in determining the status of an applicant for international protection	N/A	N/A	N/A	N/A	N/A

Such information is not collected. Effective legal acts stipulate time limits for examination of an asylum application as to substance, regardless of whether an alien is held in detention or is in an alternative to detention.

**Q3. Please provide any other evidence that may be available in your (Member State) on the impact of detention and alternatives to detention on effectiveness in terms of reaching decisions on applications for international protection and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)**

In 2011, the Lithuanian Red Cross conducted the study "Detention of asylum seekers and alternatives to detention", but this study did not consider the effectiveness of detention and alternatives to detention in terms of making decisions on international protection.

### 6.1.2 Effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and in executing returns

**Q4. Have any evaluations or studies in your (Member) State considered the impact of detention and alternatives to detention on:**

- **The length of time from apprehending an irregular migrant to issuing a return decision? Yes/No**  
No, no such studies have been conducted.
- **The length of time that transpires from issuing a return decision to the execution of the return? Yes/No**  
No, no such studies have been conducted. In 2013, the average length of time in detention from issuing a return decision to an alien's expulsion was 38.2 days (in 2009 – 66 days; in 2010 – 61 days; in 2011 – 51 days; in 2012 – 40 days).
- **The share of voluntary returns out of the total number of returns? Yes/No**  
No, no such studies have been conducted. From 2009 to 2013, 921 expulsion decisions and 7155 voluntary return decisions were adopted. Available statistics show that Lithuania promotes voluntary return. In addition, on 24 October 2013 amendments to the law entered into force providing, inter alia, for the possibility for the aliens who have illegally entered Lithuania or are illegally present in it, but are vulnerable persons or asylum seekers to choose voluntary return to a foreign country through the assistance of an international or non-governmental organisation. In the future, this could increase the number of voluntary returns.
- **The total number of removals completed? Yes/No**  
No.

**If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report**

Not applicable.

**Q5. Please provide any statistics that might be available in your (Member) State on (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure; (ii) the proportion of voluntary returns and (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year(s) available (for example "2013" or "2011-2013") and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State. (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).**

**Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.**

**Where no information is available, please indicate "No information" and briefly state why no information is available.**

**Where it is not applicable, please indicate "Not applicable" and briefly state why.**

**Statistics on the success rate in the number of departures should be provided as the number of persons who were issued a return decision and who have returned to their country of origin, and the number of persons who were issued a return decision and who have not returned to their country of origin. Please provide both the numbers and the share they represent out of the total number of persons issued a return decision.**

Applicable year(s)	Detention	Alternatives to detention			
		A1	A2	A3	A4
Average length of time from apprehending an irregular migrant to issuing a return decision	N/A	N/A	N/A	N/A	N/A
Average length of time from issuing a return decision to the	2009 – 66 days 2010 – 61 days				

<i>execution of the return</i> <sup>17</sup>	2011 – 51 days 2012 – 40 days 2013 – 38 days	N/A	N/A	N/A	N/A
<i>Number of voluntary returns (persons who opted to return voluntarily)</i>	N/A	N/A	N/A	N/A	N/A
<i>Success rate in number of departures</i>	N/A	N/A	N/A	N/A	N/A

According to Article 127(2) of the Law, a decision on the expulsion of an alien from the Republic of Lithuania must be executed immediately, unless there exist circumstances due to which the execution of the decision may be postponed. The length of time from an expulsion decision to the execution of the decision can range from 3 days up to 3 months, regardless of whether an alien is detained or has been provided an alternative to detention. The length of time needed for the execution of the decision depends on the following circumstances:

- whether a readmission agreement with a certain state has been signed;
- whether formalities regarding passage in transit require coordination;
- whether a person to be expelled is in possession of required travel documents.

According to Article 127(1) of the Law, upon issuing a decision on return of an alien to a foreign state and taking into account the alien's possibilities of prompt departure, a time limit between 7 and 30 days is set, starting from the delivery of the decision to the alien, during which the alien is obliged to voluntarily depart from the Republic of Lithuania. Where the alien is unable to voluntarily depart from the Republic of Lithuania within the set time limit for objective reasons beyond his control, the time limit may be extended.

No statistics on the success rate in the number of departures are available, because a decision on voluntary return not always returns to the institution issuing the decision (e.g., when an alien departs via another EU Member State).

**Q6. Please provide any other evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)**

No such information is available.

## 6.2. Costs

**Q7. Have any evaluations or studies on the costs of detention and alternatives to detention been undertaken in your (Member) State?**

No, no such studies have been undertaken.

**Q8. Please provide any statistics available on the costs of detention and alternatives to detention in the table below. Please provide the statistics for the latest year(s) available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).**

**Where costs can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection to measure the costs.**

**Where no information is available, please indicate "No information" and briefly state why no information is available.**

**Where it is not applicable, please indicate "not applicable" and briefly state why.**

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<sup>17</sup> Average length of time from issuing a return decision to **expulsion**

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Total costs	N/A	N/A	N/A	N/A	N/A
Staffing costs	N/A	N/A	N/A	N/A	N/A
Medical costs	N/A	N/A	N/A	N/A	N/A
Food and accommodation costs	N/A	N/A	N/A	N/A	N/A
Legal assistance	N/A	N/A	N/A	N/A	N/A
Other costs (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify	N/A	N/A	N/A	N/A	N/A

Statistical data on the costs of detention and alternatives to detention are not available.

In 2013, total costs of the Foreigners' Registration Centre amounted to approximately LTL 4,103,000. Approximately a half of the budget (LTL 2,051,872) was allocated to cover total costs related to detained aliens.

**Q9. Please provide any other evidence that may be available in your (Member) State on the cost-effectiveness of detention and alternatives to detention, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)**

No such information is available

### 6.3. Respect for fundamental rights

**Q10 Have evaluations or studies been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention)?**

No such studies have been conducted in Lithuania.

**Q11. Please provide any statistics that might be available in your (Member) State on the number of complaints regarding violations of human rights and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Please do the same with any statistics that may be available in your (Member) State on the number of voluntary returns.**

**Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.**

**Where no information is available, please indicate "No information" and briefly state why no information is available.**

**Where it is not applicable, please indicate "Not applicable" and briefly state why.**

Applicable year	Detention	Alternatives to detention			
		A1	A2	A3	A4
Number of complaints of violations of fundamental rights <b>lodged</b> with non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).	N/A	N/A	N/A	N/A	N/A
Number of complaints of violations of fundamental rights <b>upheld</b> by non-judicial bodies (e.g. Human Rights					



Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).	N/A	N/A	N/A	N/A	N/A
Number of court cases in which there have been <b>challenges</b> to the decision to detain / place in an alternative to detention based on violations of fundamental rights (where possible, please disaggregate by types of violation and by categories of third-country national)	N/A	N/A	N/A	N/A	N/A
Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been <b>upheld</b> (where possible, please disaggregate by types of violation and by categories of third-country national)	N/A	N/A	N/A	N/A	N/A

Collection of statistical data is not centralised.

**Q12. Please indicate if studies exist in your (Member) States which show negative effects of the alternatives to detention in practice. (For example, ankle bracelets can be socially stigmatising and cause physical and emotional distress.)**

No such studies exist in Lithuania.

**Q13. Please provide any other evidence that may be available in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)**

No such information is available

#### 6.4. Rate of absconding and compliance rate

**Rate of absconding is the share of persons who have absconded from all third-country nationals placed in detention or provided an alternative to detention.**

**Compliance rate is the share of persons who have complied with the alternative to detention.**

**Q14. Have evaluations or studies on the compliance rate and rate of absconding of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details.**

In Lithuania, no such evaluations or studies have been undertaken. From 2009 until 2013, 102 unaccompanied minors have been applied accommodation at the Refugees Reception Centre under the Ministry of Social Security and Labour as a measure of alternative to detention. Of these aliens, 101 withdrew without authorisation from the Refugees Reception Centre in violation of the requirements specified for the alternative to detention. It should be noted that the actual age was established not for all aliens accommodated at the Centre as unaccompanied minors.

**Q15. Please provide any statistics that might be available in your (Member) State on the rate of absconding and the compliance rate of third-country nationals in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).**

**Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.**

**Where no information is available, please indicate "No information" and briefly state why no information is available.**

**Where it is no applicable, please indicate "Not applicable and briefly state why."**

<b>Applicable year</b>	<b>Detention</b>	<b>Alternatives to detention</b>			
		<i>A1</i>	<i>A2</i>	<i>A3</i>	<i>A4</i>
<i>Rate of absconding</i>	N/A	N/A	N/A	N/A	N/A
<i>Compliance rate</i>	N/A	N/A	N/A	N/A	N/A

There is no possibility of providing such data.

**Q16. Please provide any other evidence that may be available of the impact of detention and alternatives to detention on the rate of absconding and compliance rate of third-country nationals in detention and in alternatives to detention.**

No such information is available
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## Conclusions

1. Based on the interpretation issued by the Constitutional Court of the Republic of Lithuania in its ruling of 5 February 1999, a person's detention is an *ultima ratio* and can be applied only in the cases where the objectives specified by the law cannot be achieved by other means. In other words, this means that, in view of the possibility of provision of alternatives to detention, application of such measures is necessary to ensure the rights of the person.
2. According to the version of the Law effective until 1 February 2012, asylum seekers who have illegally entered or are present in the Republic of Lithuania were not subject to detention. They used to be provided with accommodation at the Foreigners' Registration Centre without restricting their freedom of movement. Approximately 70 per cent of asylum seekers used to depart from the Foreigners' Registration Centre and not return. It follows that the asylum seekers abused the asylum procedure. Since entry into force, on 1 February 2012, of the law supplementing Article 113 with paragraph 2, the Supreme Administrative Court of Lithuania adopted a practice that, according to this provision of the Law, asylum seekers may be detained. On 24 October 2013, Article 113 of the Law was supplemented with paragraph 4, which specified in detail grounds for detention of asylum seekers.
3. When adopting a decision to detain an alien or to provide an alternative to detention, courts take into account in each individual case all facts and evaluate them comprehensively: whether the alien may hinder the adoption or implementation of the decision, whether he may abscond in order to avoid expulsion or abuses the asylum system; whether the person's identity has been established, whether the alien provides assistance to authorities in determining his legal status, whether he has left Lithuania without an authorisation pending a final decision, whether the alien's explanations contradict each other, whether he has been returned from another Member State under the Dublin II Regulation, whether its presence constitutes a threat to national security or public order, etc.
4. In practice, alternatives to detention are systemically provided to unaccompanied minors. When providing an alternative to detention, it has not been verified in all cases whether a person is a minor (the alien's oral testimony alone has been relied upon). In most cases, such aliens have left a social agency thus abusing this alternative to detention.
5. In the case of asylum seekers, courts evaluate all facts and decide in each individual case on detention or application of an alternative to detention, namely, accommodating at the Foreigners' Registration Centre without restricting the freedom of movement. Other aliens are usually granted alternatives to detention only if they hold sufficient means of subsistence or have social or family connections with Lithuania. An examination of the case law allows for the conclusion that aliens often do not meet these conditions, hence the alternative to detention is provided rarely. The practice of not providing alternatives to detention to aliens on the sole ground of lack of means of subsistence or social or family connections with Lithuania, etc., restricts the application of alternatives to detention. It could be possible to discuss the possibility of provision of an alternative to detention, namely, accommodating at the Foreigners' Registration Centre without restricting the freedom of movement, to the aliens whose identity has been established, who constitute no threat to public order, provide assistance to the court, etc.

## Annexes

**Table 1: Statistics on number of third-country nationals in detention and provided alternatives to detention per category**

	2009	2010	2011	2012	2013	Source / further information
<b>Statistics on number of third-country nationals in detention per category</b>						
Total number of third-country nationals in detention <sup>18</sup>	212	132	241	375	363	Migration Yearbook
Number of third-country national applicants for international protection in ordinary procedures in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of applicants for international protection subject to Dublin procedures in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of rejected applicants for international protection in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of rejected family reunification applicants in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)	N/A	N/A	N/A	N/A	N/A	N/A
Number of persons detained to prevent illegal entry at borders in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) issued a return decision in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of persons who have been issued a return decision in detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category	N/A	N/A	N/A	N/A	N/A	N/A
Number of other third-country nationals placed in immigration detention	N/A	N/A	N/A	N/A	N/A	N/A
<b>Statistics on number of third-country nationals provided alternatives to detention</b>						
Total number of third-country nationals provided alternatives to detention	21	35	15	94	24	Data of the Migration Yearbook and the Refugees Reception Centre under the Ministry of Social Security and Labour
Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention	2	8	5	10	6	Data of the Migration Yearbook
Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention						
Number of international protection applicants subject to Dublin procedures						

<sup>18</sup> Aliens detained on grounds of illegal entry and illegal presence.

provided alternatives to detention						
Number of rejected applicants for international protection provided alternatives to detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of rejected applicants for family reunification provided alternatives to detention	N/A	N/A	N/A	N/A	N/A	N/A
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)	N/A	N/A	N/A	N/A	N/A	N/A
Number of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention who have not applied for international protection	N/A	N/A	N/A	N/A	N/A	N/A
Number of persons issued a return decision provided alternatives to detention						
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category provided alternatives to detention: Unaccompanied Minors	-	8	4	81	9	Data of the Refugees Reception Centre under the Ministry of Social Security and Labour
Number of other third-country nationals provided alternatives to detention (Please specify the category(ies))	19	19	6	3	9	Data of the Migration Yearbook

**Table 2: Average length of time in detention**

<b>Average length of time in detention</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Source / further information</b>
Average length of time in detention of all categories of third-country nationals in detention	66	61	51	40	38	Data of the Foreigners' Registration Centre
Average length of time in detention of applicants for international protection in ordinary procedures	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of fast-track (accelerated) international protection applicants (accelerated international protection procedures)	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of applicants for international protection subject to Dublin procedures	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of rejected applicants for international protection	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of rejected family reunification applicants	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of other rejected applicants for residence permits on basis other than family reunification (Please specify)	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of persons detained to prevent illegal entry	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) who have not applied for international protection	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of persons who have been issued a return decision	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category	N/A	N/A	N/A	N/A	N/A	N/A
Average length of time in detention of other third-country nationals placed in immigration detention	N/A	N/A	N/A	N/A	N/A	N/A

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