Detention - Estonia

Overview

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Relevant EU legislation

Estonia is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through the Act on Granting International Protection to Aliens (AGIPA).

National legislation

Estonia transposed the recast Reception Conditions Directive, the recast Asylum Procedures and the Dublin III Regulation by the Act on Granting International Protection to Aliens (AGIPA) | Välismaalasele rahvusvahelise kaitse andmise seadus. This act provides for the detention of applicants for international protection.

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	Police and Border Guard Board | Politsei- ja Piirivalveamet , Estonian Internal Security Service	N/A
Administration and management of detention facilities	Police and Border Guard Board | Politsei- ja Piirivalveamet	N/A

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Area	National authority/ stakeholder	Assistance to competent authority
Information provision in detention	Police and Border Guard Board | Politsei- ja Piirivalveamet	N/A
Interpretation services in detention	Police and Border Guard Board | Politsei- ja Piirivalveamet	N/A
Access to the procedure and provision of asylum information in detention	Police and Border Guard Board | Politsei- ja Piirivalveamet	N/A
Detention for the Dublin procedure	Police and Border Guard Board | Politsei- ja Piirivalveamet , Estonian Internal Security Service	N/A
Processing of asylum applications of applicants who are in detention	Police and Border Guard Board | Politsei- ja Piirivalveamet	N/A
Legal assistance and representation in detention	Estonian Bar Association	N/A
Review of detention	Administrative courts	N/A

Grounds for detention during the asylum procedure

Grounds for detention in national law

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Detention in the context of identification or verification of identity

Under Section 36[1](2) of AGIPA, an applicant for international protection may, if absolutely necessary, be detained for the purpose of identification or identity verification.

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

According to Section 68[8] of the Obligation to Leave and Prohibition on Entry Act (OLPEA), a foreigner is considered at risk of absconding if:

- The foreigner has not left Estonia or a Member State of the Schengen Convention after the deadline in the pre-departure order for a voluntary departure;
- The foreigner has submitted false information or a forged document when applying for a legal basis for stay in Estonia, the extension of a stay, Estonian citizenship, international protection or an identity document;
- There is reasonable doubt about the identity or citizenship of the foreigner;
- The foreigner has repeatedly committed intentional criminal offenses or has committed a criminal offense for which they have been sentenced to imprisonment;
- The foreigner has not complied with the supervision measures to ensure compliance with the pre-departure order;
- The foreigner has informed the PBGB or the Defence Police Board, or an administrative body concludes from their attitudes and behaviour, that they do not wish to comply with the obligation to leave;
- The foreigner has entered Estonia during the period of validity of the prohibition on entry applied to them;
- The foreigner has been detained due to unlawful crossing of the external border of Estonia and has not received a permit or the right to stay in Estonia;
- The foreigner has left the designated place of residence or another Member State of the Schengen Convention without authorisation;
- The foreigner’s obligation to leave has been enforced by a court decision.

The national legal provisions on detention of applicants due to a risk of absconding are outlined in Section 361(2) of AGIPA. Detention may be imposed, particularly on the grounds of identifying the facts relevant to the processing of

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the application for international protection, when there is a risk of absconding or when the transfer of a person under the Dublin III Regulation is at risk due to the potential for the person to abscond.

Additionally, Section $36^1(2^1)$ specifies that a risk of absconding exists if there is a circumstance referred to in Section 688 of OLPEA or if the applicant has left another EU Member State without authorisation.

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

Under Section $36^1(2)$ of AGIPA, an applicant for international protection may, if absolutely necessary, be detained to verify the legal grounds for their arrival and stay. For applicants detained at the border, the general guarantees apply.

Detention in the context of a return procedure

Under Section $36^1(2)$ of AGIPA, an applicant for international protection may be detained, if absolutely necessary, when there are reasonable grounds to believe that the individual has submitted an application for international protection with the intent to delay the obligation to leave or avoid a removal.

The detention of a foreigner for the purpose of an expulsion is suspended until a decision on the application for international protection has been made. If a foreigner submits an application for international protection while already detained in a detention centre or during the expulsion process, the PBGB or the Estonian Internal Security Service is required to detain the individual and seek permission from the administrative court to extend the detention of the applicant for international protection for up to 2 months. This request must be made within 48 hours of the application being lodged, provided the grounds for detention are in accordance with the law. In such cases, the foreigner's detention for expulsion is suspended until a decision on the international protection application is reached.

Detention in the context of national security and public order

Under Section $36^1(2)$ of AGIPA, an applicant for international protection may be detained, if absolutely necessary, to protect national security or public order.

Detention for the purpose of a Dublin transfer

Under Section $36^1(2)$ of AGIPA, an applicant for international protection may be detained, if absolutely necessary, when the transfer of a person under the Dublin

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III Regulation is at risk due to the potential for the person to abscond.

Less coercive measures (alternatives to detention)

According to Section 29 of AGIPA, the PBGB may apply the following supervisory measures to an applicant for the purposeful, efficient, simple and expeditious conduct of international protection proceedings:

1. Residence in a specified place;
2. Appearing for registration with the PBGB at specified intervals;
3. Notifying the PBGB of absence from the place of residence for more than 3 days;
4. Deposit of a foreign travel document or other identity document with the PBGB;
5. Appearing for counselling.

The applicant is notified in writing of the application of supervision measures. The PBGB and the Security Police Board have the right to check the observance of supervision measures by the applicant at any time. The PBGB may also extend or modify surveillance measures as necessary.

The most commonly used alternatives to detention in international protection and return procedures include appearing for registration at the PBGB at prescribed intervals and attending meetings to clarify circumstances related to a return decision. Applicants not placed in an accommodation centre are typically required to register with the PBGB once a week or twice a month. Procedural obligations, such as depositing documents and residing at a designated place, are generally applied in practice but are rarely formalised unless explicitly required. In such cases, they must be justified by the PBGB.

In return procedures, surveillance measures are determined when issuing the return decision, and additional measures are formalised through a separate administrative act, if necessary.

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

For applicants who request international protection while in detention, general rules apply. Applications from detention are prioritised.

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Procedural safeguards

Access to information and interpretation

The PBGB or the Estonian Internal Security Service may detain an applicant for international protection for up to 48 hours, without the need for administrative court approval, in a detention centre or their offices. If detention is required for more than 48 hours, the PBGB or the Estonian Internal Security Service must seek authorisation from an administrative court to extend the detention for up to 2 months.

According to Section 36^3 of AGIPA, the applicant for international protection is provided with essential translation and transport services necessary for the completion of the procedural steps outlined in the law.

The applicant is informed orally of the grounds for detention in the presence of an interpreter. A detention protocol, setting out the grounds for detention, is signed by the applicant and translated into their language. The applicant may express disagreement with the detention in writing.

Legal assistance and representation

Individuals in detention are permitted to correspond and meet with legal aid providers. They may also contact UNHCR, the Estonian Human Rights Centre and the IOM free of charge. Those without financial means may make phone calls free of charge, upon request, to legal aid providers, NGOs and other relevant stakeholders.

Length of detention

When an applicant is to be detained for more than 48 hours, the administrative court must approve the detention for a period of up to 2 months. The court may extend this period in increments of up to 4 months, as long as the legal grounds for detention remain valid and the principles outlined in Section 36^1 of AGIPA are adhered to.

Judicial review of detention

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The review of the detention procedure is conducted by the administrative court and must be requested when an applicant is to be detained for more than 48 hours.

According to Section 36^5(3) of AGIPA, if an applicant for international protection wishes to challenge a detention order issued by the court that lacks a descriptive and reasoned part, the court is required to provide the applicant with a detailed and reasoned explanation at the earliest opportunity.

Under Section 36^2(3)(4) of AGIPA, if an individual submits an application for international protection during detention in a detention centre or while undergoing a removal, the PBGB or the Estonian Defence Police Board is required to detain the applicant and apply to the administrative court within 48 hours for authorisation to detain the applicant for up to 2 months, provided the grounds for detention are met. Additionally, during this process, the detention for removal purposes is suspended until a decision on the international protection application has been made.

Specific conditions relating to detention

Conditions of detention

The detention facility ensures access to open-air space, privacy and confidentiality, access to education, opportunities to leave the facility and freedom of movement within it, language support, recreational and leisure activities, as well as medical care and psychological assistance.

Each individual in detention is provided with a phone card upon entry and a new card is issued every month. Personal mobile phones are not allowed; however, individuals may access their phone numbers, music and important documents. They are permitted to correspond with state agencies, legal aid providers, UNHCR and the IOM, and may make free calls to family members or others upon request.

Visits are allowed every working day, lasting up to 3 hours, with no time limit for consular workers, legal counsel, ministers of religion and officials from relevant authorities or organisations.

The detention rooms are 17m², accommodating up to four individuals, providing 4-5m² per person. Rooms are divided by gender, with families, individuals with

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disabilities, and unaccompanied minors assigned to a special female floor. Individuals may request separate accommodation if necessary.

The rooms are furnished with essential items, such as beds, tables, chairs and wardrobes, and, in specialised rooms, additional amenities like integrated toilets, TV and nursery equipment for families or those with disabilities. Individuals also have access to laundry facilities, and bed linens are changed bi-monthly.

Upon detention, applicants are informed about the possibility of receiving legal aid. Legal counsellors are present in the detention centre on working days to provide legal aid.

Detention of applicants with special needs

Legislative overview

Special consideration is given to the needs of vulnerable individuals, including minors, persons with disabilities, the elderly, pregnant women, single parents with minor children and those who have suffered from torture, rape or other serious forms of psychological, physical or sexual violence. Their detention is regularly monitored by the PBGB to address these needs.

In practice, unaccompanied minor asylum seekers are not detained.

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